

Central Indiana Area at or below the attainment year emission levels, as required by the transportation conformity regulations.

VI. What Are the Effects of EPA's Proposed Actions?

Approval of the redesignation request would change the official designation of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties, Indiana for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Final rulemaking approving the redesignation request would incorporate into the Indiana SIP a plan for maintaining the ozone NAAQS through 2020 in these Counties. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes 2006 and 2020 MVEBs for these counties.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action", and therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed 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.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has

no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: July 23, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA-R05-OAR-2007-0405; FRL-8446-5]

Approval of Implementation Plans; Wisconsin; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a revision to the Wisconsin State Implementation Plan (SIP) submitted on June 19, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) which concerns sulfur dioxide (SO₂), oxides of nitrogen (NO_x) annual, and NO_x ozone season emissions for the State of Wisconsin, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Wisconsin's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is proposing to approve is an abbreviated

SIP revision that addresses the methodology to be used to allocate annual and ozone season NO_x allowances under the CAIR FIP, except for allowances in the compliance supplement pool. The portions of Wisconsin's submittal (those associated with the compliance supplement pool and Superior Environmental Performance) that EPA is proposing to disapprove are inconsistent with CAIR and/or otherwise inappropriate to include in a CAIR SIP and must, therefore, be disapproved.

DATES: Comments must be received on or before August 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0405, by one of the following methods:

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

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

3. *Fax*: (312) 886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2007-0405. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, aburano.douglas@epa.gov.

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VI. Proposed Action

VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

CAIR SIP Partial Approval and Partial Disapproval

EPA is proposing to partially approve and partially disapprove a revision to Wisconsin's SIP, submitted on June 19, 2007, which would modify the application of certain provisions of the CAIR FIP concerning SO₂, NO_x annual and NO_x ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Wisconsin is subject to the CAIR FIP that implements the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR SO₂, NO_x annual, and NO_x ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_x allowances for the NO_x annual and NO_x ozone season trading programs. The CAIR FIP provides that this methodology, if approved as EPA is proposing, will be used to allocate NO_x allowances to sources in Wisconsin, instead of the Federal allocation methodology otherwise provided in the FIP. The SIP revision also provides a methodology for allocating the CSP in the CAIR NO_x annual trading program. Consistent with the flexibility provided in the FIP, these provisions, if approved, will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Wisconsin. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Wisconsin's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is proposing to disapprove a portion of Wisconsin's submittal. Certain separable provisions of Wisconsin's abbreviated SIP are not approvable. These provisions include NR 432.04 "Compliance supplement pool" and NR 432.08 "Superior environmental performance." As discussed below, NR 432.04 includes provisions that would be inconsistent with CAIR. NR 432.08 would grant regulatory flexibility to sources that voluntarily reduce emissions beyond what is required under State and Federal regulations. The scope of

regulatory flexibility provided by NR 432.08 is ambiguous. To the extent this flexibility relates to state-only regulatory requirements, the regulatory provisions are not appropriately included in a SIP. To the extent this flexibility relates to Federal requirements reflected in state regulations, this type of flexibility is not allowed under CAIR, and it is inappropriate to simply assume that other Federal requirements allow such flexibility. Therefore, the regulatory flexibility provisions cannot be included in Wisconsin's CAIR abbreviated SIP revision and cannot be approved.

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

The 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 NAAQS for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states in the eastern part of the country. As a result, EPA required those upwind states to revise their SIPs to include control measures that reduce emissions of SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual statewide emission reduction requirements (i.e., budgets) for SO₂ and annual statewide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets statewide emission reduction requirements for NO_x for the ozone season (May 1st to September 30th). Under CAIR, states may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR sets forth what subject states must include in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings, effective May 25, 2005, that the states had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, three years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a two-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must

do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all states covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR state is subject to the FIPs until the state fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone-season model trading programs, as appropriate. The CAIR FIP SO₂, NO_x annual, and NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to effectively create a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all states covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_x allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

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

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

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

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

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

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most states will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such states, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, states may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of, or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_x allowance allocation methodology).

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

1. Include NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_x ozone season trading program;
2. Provide for allocation of NO_x annual or NO_x ozone season allowances by the state, rather than the

Administrator, using a methodology chosen by the state;

3. Provide for allocation of NO_x annual allowances from the CSP by the state, rather than by the Administrator, 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 FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

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

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the state's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_x allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the state's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the June 19, 2007, submittal from Wisconsin has been submitted as an abbreviated SIP revision.

V. Analysis of Wisconsin's CAIR SIP Submittal

A. Nature of Wisconsin's Submittal

On June 19, 2007, Wisconsin submitted a request to process their draft rules for addressing CAIR requirements. The Wisconsin Department of Natural Resources (WDNR) held hearings on these proposed rules on October 10 and October 12, 2006. The 30-day public comment period for the proposed rules ended on October 23, 2006.

B. Summary of Wisconsin's Rules

Chapter NR 432 of the Wisconsin Administrative Code Chapters Related to Air Pollution Control, entitled "Allocation of Clean Air Interstate Rule NO_x Allowances," includes provisions addressing utility emissions of NO_x. These rules are designed to address the requirements of the CAIR.

Chapter NR 432 includes eight subparts:

1. NR 432.01 Applicability; purpose
2. NR 432.02 Definitions
3. NR 432.03 CAIR NO_x allowance allocation
4. NR 432.04 Compliance supplement pool
5. NR 432.05 CAIR NO_x ozone season allowance allocation

6. NR 432.06 Timing requirements for allocations of CAIR NO_x allowances and CAIR NO_x ozone season allowances

7. NR 432.07 CAIR renewable units

8. NR 432.08 Superior environmental performance

Subchapter NR 432.01 entitled, "Applicability; purpose" consolidates the applicability and purpose section for both the annual and ozone season trading programs. While the FIP already contains an applicability section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the applicability section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP.

Subchapter NR 432.02 entitled, "Definitions" adopts many of the CAIR FIP definitions but is rewritten in a format to conform to the state's regulatory writing style requirements. While the FIP already contains a definitions section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the definition section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP. Additionally, WDNR has added definitions not found in the CAIR FIP. These definitions are included to address the fact that Wisconsin's rule allocates allowances to renewable energy sources, which the FIP does not do, and to address the fact that Wisconsin allocates allowances to emitting sources based on energy output rather than heat input. The CAIR FIP uses a heat input based allocation methodology.

Subchapter NR 432.03 entitled, "CAIR NO_x allowance allocation" contains the state's annual NO_x allowance allocation methodology. The state rule uses gross electrical output as the basis for calculating the number of allowances existing sources should be allocated. Also included in the allocation methodology are renewable energy units.

Subchapter NR 432.04 entitled, "Compliance supplement pool" allocates a limited number of allowances to sources that make early reductions and to sources that can make a demonstration that electric reliability will be compromised.

Subchapter NR 432.05 entitled, "CAIR NO_x ozone season allowance allocation" contains the state's ozone season NO_x allowance allocation methodology. The state rule uses gross electrical output as the basis for

calculating the number of allowances existing sources that should be allocated. Also included in the allocation methodology are renewable energy units.

Subchapter NR 432.06 entitled, "Timing requirements for allocations of CAIR NO_x allowances and CAIR NO_x ozone season allowances" consolidates the timing requirements for issuance of NO_x allowances for both the annual and ozone season programs.

Subchapter NR 432.07 entitled, "CAIR renewable units" was added by Wisconsin to address renewable energy units. Under the CAIR FIP, EPA did not allocate allowances for renewable energy units. Wisconsin has chosen to allocate both NO_x annual and NO_x ozone season allowances to renewable units. NR 432.07 requires renewable units to comply with the same trading requirements that the regulated EGUs comply with, such as designating an account representative who represents the unit in any trading activity, and establishing accounts for the NO_x trading programs and the process for requesting NO_x allowances.

Subchapter NR 432.08 entitled, "Superior environmental performance" offers regulatory flexibility to sources that enter into voluntary agreements to reduce emissions of NO_x, SO₂, mercury, carbon dioxide, or heavy metals beyond levels required by Federal and state laws.

C. State Budgets for Allowance Allocations

The CAIR NO_x annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu for phase 1, and 0.125 lb/mmBtu for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the state NO_x annual and NO_x ozone season budgets from the regional budgets using state heat input data adjusted by fuel factors.

The CAIR state SO₂ budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under Title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO₂ emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO₂ emissions in the CAIR trading program.

The CAIR FIP established the budgets for Wisconsin as 40,759 tons for NO_x annual emissions for 2009–2014, 33,966 tons for NO_x annual emissions for 2015 and beyond, 17,987 tons for NO_x ozone season emissions for 2010–2014, 14,989 tons for NO_x ozone season emissions for 2015 and beyond, 87,264 tons for SO₂ emissions for 2010–2014, and 61,085 tons for SO₂ emissions for 2015 and beyond. Wisconsin's SIP revision, proposed for approval in today's action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

D. CAIR Cap-and-Trade Programs

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

The provisions of the CAIR SO₂ FIP are also similar to the provisions of the NO_x annual and ozone season FIPs. However, the SO₂ FIP is coordinated with the ongoing Acid Rain SO₂ cap-and-trade program under CAA Title IV. The SO₂ FIP uses the Title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked Title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO₂ cap-and-trade program, with

each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO₂ cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO₂, NO_x annual, and NO_x ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

Wisconsin is subject to the CAIR FIP for ozone and PM_{2.5}, and the CAIR FIP trading programs for SO₂, NO_x annual, and NO_x ozone season apply to sources in Wisconsin. Consistent with the flexibility it gives to states, the CAIR FIP provides that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The June 19, 2007 submission of Wisconsin is such an abbreviated SIP revision.

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

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

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the state's NO_x SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304, and add the applicability provisions in the state's NO_x SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304, in order to include in the CAIR NO_x ozone season trading program all units required to be in the state's NO_x SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_x ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.* units serving a generator with a nameplate capacity of 25 MWe or less), that the state currently requires to be in the NO_x SIP Call trading program.

Because Wisconsin was not included in the NO_x SIP Call trading program, Wisconsin did not have an option of expanding the applicability provisions of the CAIR NO_x ozone season trading program.

F. NO_x Allowance Allocations

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

The CAIR FIP provides states the flexibility to establish a different NO_x allowance allocation methodology that will be used to allocate allowances to sources in the states if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, states have flexibility with regard to:

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

Consistent with the flexibility given to states in the CAIR FIP, Wisconsin has chosen to replace the provisions of the CAIR NO_x annual FIP concerning the allocation of NO_x annual allowances with its own methodology. NR 432.03 contains the provisions for the NO_x annual allowance distribution methodology Wisconsin has adopted. Wisconsin has chosen to distribute NO_x annual allowances based upon gross electrical output. Where the CAIR FIP allocates allowances to NO_x emitting sources only and does so on a fuel-weighted basis (as mentioned above), Wisconsin's rule eliminates that fuel weighting and allocates allowances to renewable energy units as well. For units that have operated for five or more consecutive years, the three highest annual amounts of the unit's gross electrical output will be the basis for determining that unit's allocations.

Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the total trading budget. The number of NO_x annual allocations a new unit can request from the new unit set-aside is limited by the number of the unit's total tons of NO_x emissions during the calendar year immediately before the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.03.

Consistent with the flexibility given to states in the CAIR FIP, Wisconsin has chosen to replace the provisions of the CAIR NO_x ozone season FIP concerning allowance allocations with their own methodology. NR 432.05 contains the provisions for the NO_x ozone season allowance distribution methodology Wisconsin has adopted. Wisconsin has chosen to distribute NO_x ozone season allowances based upon gross electrical output where the CAIR FIP allocates allowances to NO_x emitting sources only and does so on a fuel-weighted basis (as mentioned above); Wisconsin's rule eliminates that fuel weighting and allocates allowances to renewable energy units as well. For units that have operated for five or more consecutive years, the three highest ozone season amounts of the unit's gross electrical output will be the basis for determining that unit's allocations. Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the total trading budget. The number of NO_x ozone season allocations a new unit can request from the new unit set-aside is limited by the number of the unit's total tons of NO_x emissions during the ozone season immediately before the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.05.

Since Wisconsin has chosen to allocate both NO_x annual and NO_x ozone season allowances to renewable energy units, the state has adopted provisions specifically for these sources to comply with. These provisions are found in NR 432.07 which requires renewable units to comply with the same trading requirements that the regulated EGUs comply with, such as designating an account representative who represents the unit in any trading activity, and establishing accounts for

the NO_x trading programs and the process for requesting NO_x allowances.

G. Allocation of NO_x Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a state's share of the CSP is based upon the state's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_x reductions during 2007 or 2008 beyond what is required by any applicable state or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_x annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those states. See 40 CFR 51.123(p)(2) (requiring that State CSP provisions be consistent with the model rule at 40 CFR 96.143, the FIP at 40 CFR 97.143, or CAIR at 40 CFR 51.123(e)(4)).

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen to modify the provisions of the CAIR NO_x annual FIP concerning the allocation of allowances from the CSP. NR 432.04 contains the provisions Wisconsin has adopted for distribution of the CSP. Wisconsin has chosen to distribute CSP allowances based on early reduction credits or based on the need to avoid undue risk to electric reliability. The first methodology based on early reduction credits essentially mirrors the FIP's early reduction credit methodology.

The description in Wisconsin's rule of the second methodology based on need is somewhat unclear. EPA interprets the provision to require a demonstration that a unit cannot avoid undue risk to electric reliability if it keeps its emissions in 2009 from exceeding its 2009 allowance allocation. Even if the unit could obtain additional allowances to cover emissions above its allocation, and thereby comply with the requirement to hold allowances covering emissions, the unit could be given CSP allowances. In contrast, EPA's CSP provisions in the model rule, the FIP, and CAIR require a demonstration that, without being given CSP allowances, a unit cannot avoid undue risk while keeping its 2009 emissions from exceeding *all* the

allowances it holds, both its 2009 allowance allocations and other allowances it can obtain for compliance. Thus, Wisconsin's provision is inconsistent with EPA's CSP provisions. Moreover, since Wisconsin's entire CSP is available for units meeting either the early reduction credit or the undue risk criteria, the early reduction credit and undue risk provisions cannot be administered separately, and the Wisconsin CSP must be administered by a single agency. Consequently, EPA proposes to disapprove all of Wisconsin's CSP provisions. This portion of Wisconsin's SIP submittal is separable from the rest of the submittal and can be disapproved without compromising the integrity of the portion where we are proposing approval.

In the absence of approved CSP provisions in an abbreviated CAIR SIP, the FIP provisions for the allocation of CSP allowances would continue to apply. Therefore, with the disapproval of Wisconsin's CSP provisions providing for distribution of the CSP the FIP CSP provisions would continue to apply in Wisconsin.

H. Individual Opt-In Units

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

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that

are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a state only if the state's abbreviated SIP revision adopts the opt-in provisions. The state may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The state also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the state without the ability for units to opt into the program.

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen not to allow non-EGUs meeting certain requirements to participate in the CAIR NO_x annual trading program.

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen not to permit non-EGUs meeting certain requirements to participate in the CAIR NO_x ozone season trading program.

Consistent with the flexibility given to states in the FIPs, Wisconsin has chosen not to allow certain non-EGUs to opt into the CAIR SO₂ trading program.

I. Additional Provisions Found in Wisconsin's Abbreviated CAIR SIP Submittal

In addition to the already mentioned portions of Wisconsin's rules that have been submitted as part of the abbreviated CAIR SIP, Wisconsin has two other provisions.

NR 432.06 describes the timing requirements for allocating both NO_x annual allowances and NO_x ozone season allowances. These requirements are consistent with the timing requirements for allocating allowances under an abbreviated SIP scenario found in 40 CFR 51.123 and are, therefore, being proposed for approval.

NR 432.08 would allow sources to make voluntary reductions beyond state and Federal requirements in exchange for regulatory flexibility. For the reasons discussed above, we are proposing to disapprove this portion of Wisconsin's CAIR abbreviated SIP. This portion is separable from the rest of Wisconsin's SIP submittal and can be disapproved without compromising the integrity of the portion where we are proposing approval.

VI. Proposed Action

EPA is proposing to partially approve and partially disapprove Wisconsin's abbreviated CAIR SIP revision submitted on June 19, 2007. Wisconsin is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade

programs for SO₂, NO_x annual, and NO_x ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIP, Wisconsin adopts provisions for allocating allowances under the CAIR FIP NO_x annual and NO_x ozone season trading programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIP in Wisconsin. These provisions in Wisconsin's abbreviated SIP revision meet the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_x annual and NO_x ozone season emissions. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Wisconsin's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

Wisconsin's submittal also contains provisions that are inconsistent with requirements concerning the CSP and that grant unacceptable regulatory flexibility to some sources. EPA is proposing to disapprove these portions of Wisconsin's rule. We are able to propose disapproval of these specific portions of Wisconsin's submittal because they are separable from the rest of Wisconsin's submittal and disapproving only these parts has no effect on the rest of the submittal that we are proposing to approve.

VII. 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 proposes to approve state law as meeting Federal requirements and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to approve pre-existing requirements under state law and would 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 (Public Law 104-4).

This proposal also does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 97

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

Dated: July 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****42 CFR Part 71**

RIN 0920-AA03

Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Animal-Importation Regulations

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to begin the process of revising the regulations that cover the importation of dogs and cats (42 CFR 71.51), including by extending these regulations to cover domesticated ferrets. This ANPRM will also address the importation of African rodents (42 CFR 71.56) into the United States. HHS/CDC is also considering the need for additional regulations to prevent the introduction of zoonotic diseases into the United States.

The input received from stakeholders and other interested parties via the ANPRM process will lead to a Notice of Proposed Rulemaking (NPRM), with the aim of improving HHS's ability to prevent importation of communicable diseases into the United States. The scope of this ANPRM does not include the non-human primate regulations (42 CFR 71.53).

DATES: To be assured consideration, written comments must be received on or before October 1, 2007.

ADDRESSES: You may submit written comments to the following address: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Global

Migration and Quarantine, ATTN: Animal Importation Regulations, 1600 Clifton Road, N.E., (E03), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, N.E., Atlanta, GA 30333. Please call ahead to 1-866-694-4867 and ask for a representative in the Division of Global Migration and Quarantine to schedule your visit.

You may also submit written comments electronically via the Internet at <http://www.regulations.gov> or via e-mail to

animalimportcomments@cdc.gov.

Electronic comments may be viewed at <http://wwwn.cdc.gov/publiccomments/>. CDC's general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change, including any personal identifiers or contact information.

You can download an electronic version of the ANPRM at <http://www.regulations.gov>. CDC has also posted the ANPRM and related materials to its Web site at <http://www.cdc.gov/ncidod/dq>.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Mullan, (404) 639-4537.

SUPPLEMENTARY INFORMATION: Zoonoses are diseases that are transmissible from animals to people. The prevention of zoonoses in humans poses special challenges, and requires consideration of the role of animals in disease transmission. For example, domesticated animals such as dogs and cats can carry rabies, and wild exotic animals can carry a variety of known and emerging zoonotic pathogens. Under Section 361 of the Public Health Service Act (42 U.S.C. 264), HHS/CDC is responsible for regulations to prevent the introduction, transmission, and spread of communicable diseases from foreign countries into the United States, and from one U.S. State or possession into another. HHS/CDC recently published a Notice of Proposed Rulemaking to revise its foreign and interstate quarantine regulations in 42 CFR, Parts 70 and 71. Under its statutory authority, HHS/CDC may regulate the importation of animals into the United States that pose a health risk to humans. The Food and Drug Administration (FDA) within HHS also has regulatory authority under the Public Health Service Act to make and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases. Within the U.S. Department of Agriculture (USDA), the

Animal and Plant Health Inspection Service (APHIS) has the authority to regulate the importation of animals; its focus is primarily on animal-welfare issues and diseases of veterinary and agricultural importance. In addition, the Office of Law Enforcement within the U.S. Fish and Wildlife Service (FWS) of the U.S. Department of the Interior (DOI) regulates the entry of some shipments of animals to ensure compliance with U.S. laws and international agreements that protect endangered species.

HHS/CDC currently regulates the importation of dogs and cats into the United States to prevent the entry of zoonotic diseases through 42 CFR 71.51. Dogs and cats are subject to inspection at ports of entry for evidence of infectious diseases transmissible to humans. If a dog or cat appears to be ill, inspectors may require further examination by a licensed veterinarian.

In addition, HHS/CDC provides additional restrictions on the importation of dogs to prevent the entry of rabies. Rabies is a virus that causes a fatal disease in humans and animals, especially dogs. In the United States, widespread mandatory vaccination of dogs has eliminated canine strains of rabies, and dramatically reduced the number of human cases in this country. However, canine strains of rabies remain a serious health threat in many other countries, and preventing the entry of animals infected with this strain of rabies into the United States is an important public-health priority. HHS/CDC currently regulates the importation of dogs into the United States by requiring rabies vaccination and the confinement of most dogs for up to 30 days after vaccination, principally to prevent the importation of rabies. Recently, HHS/CDC has received reports of large-volume shipments of puppies intended for immediate re-sale. These animals often appear younger than the age on their accompanying documents, and their vaccination status is questionable. Although a veterinary examination can assess many common zoonotic diseases of dogs, current regulations do not require dogs to be accompanied by a standard international health certificate signed by a licensed veterinary authority in the country of origin or means of unique identification for these animals. In addition, current regulations do not require rabies vaccination for cats, which are highly susceptible to canine strains of rabies virus, and can also transmit the infection to humans. Furthermore, current regulations do not require rabies vaccination or inspection for ferrets, which are domesticated pet