was delinquent for a period of less than ten years. The amendment to the law allows for the collection of debt by offsetting nontax payments without any time limitation and applies to any debt outstanding on or after the date of the enactment of the Act.

Although this statutory change does not directly apply to the offset of tax refund payments, we are nevertheless proposing to amend this regulation to mirror the statutory change because the regulatory time limitation contained in this regulation was intended to create uniformity in the way non-judicial offsets were conducted. Because there was no logical reason why the ten-year limitation applicable to the offset of nontax payments should not apply to non-judicial offsets under other statutes which did not contain their own limitations period, this regulation applied a ten-year limitation on the collection of debt by tax refund offset. However, now that the ten-year limitation has been eliminated for the offset of nontax payments, the rationale for including a ten-year limitation in this rule no longer applies.

The proposed changes to this rule remove the limitations period by explicitly stating that no time limitation shall apply, and explain that by removing the time limitation, all debts, including debts that were ineligible for collection by offset prior to the removal of the limitations period, may now be collected by tax refund offset. Additionally, to avoid any undue hardship, we are proposing the addition of a notice requirement applicable to debts that were previously ineligible for collection by offset because they had been outstanding for more than ten years. For these debts, creditor agencies must certify to FMS that a notice of intent to offset was sent to the debtor after the debt became ten years delinquent. This notice of intent to offset is intended to alert the debtor that his debt may now be collected by offset and allows the debtor additional opportunities to dispute the debt, enter into a repayment agreement or otherwise avoid offset. This requirement will apply even in a case where notice was sent prior to the debt becoming ten years old. This requirement applies only with respect to debts that were previously ineligible for collection by offset because of the time limitation and does not apply to debts, such as Department of Education student loan debts, that could be collected by offset without regard to any time limitation prior to this regulatory change.

II. Procedural Analyses

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes the ten-year time limitation on the collection of debts by tax refund offset. Moreover, the provisions contained in this proposed rule would primarily affect federal creditor agencies and impose no additional costs to small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veterans' benefits, Wages.

For the reasons set forth in the preamble, we propose to amend 31 CFR part 285 as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

2. In § 285.2, remove paragraph (d)(1)(ii), redesignate paragraphs (d)(1)(iii) through (d)(1)(v) as paragraphs (d)(1)(ii) through (d)(1)(ii) through (d)(1)(iv) respectively, and add paragraph (d)(6) as follows:

§ 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

* * * * *

(d) * * *

(6)(i) Creditor agencies may submit debts to FMS for collection by tax refund offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] may be collected by tax refund offset.

(ii) For debts outstanding more than ten years on or before [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], creditor agencies must certify to FMS that the notice of intent to offset described in paragraph (d)(1)(iii)(B) of this section was sent to the debtor after the debt became ten years delinquent. This requirement will apply even in a case where notice was also sent prior to the debt becoming ten years delinquent, but does not apply to any debt that could be collected by offset without regard to any time limitation prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

Dated: May 29, 2009.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–13604 Filed 6–10–09; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0033; FRL–8916–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the West Virginia State Implementation Plan (SIP). This revision addresses the requirements of

EPA's Clean Air Interstate Rule (CAIR), and recodifies and revises provisions pertaining to internal combustion engines and cement kilns that are subject to the nitrogen oxides (NO_X) SIP Call. Although the D.C. Circuit found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to take action on CAIR SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO_2 and NO_X for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. In the SIP revision that EPA is proposing to approve, West Virginia will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the SIP revision, as interpreted and clarified herein, as fully implementing the CAIR requirements for West Virginia.

DATES: Written comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0033 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2009–0033, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0033. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Proposing?

EPA is proposing to approve the SIP revision submitted by West Virginia on April 22, 2008, as interpreted and clarified herein, as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. EPA is also proposing to approve recodification and revision of provisions that address NO_X ozone season emission reduction requirements for internal combustion engines and cement kilns, updated only to revise NO_X SIP Call references to CAIR references. These provisions for internal combustion engines and cement kilns were previously approved as part of West Virginia regulation 45CSR1. 45CSR1 set forth the requirements for both: non-EGUs that were part of the NO_X Budget Trading Program, and non-EGUs that were not part of the trading program but instead had specific emission requirements. EPA will no longer administer the NO_X Budget Trading program after 2008, therefore West Virginia chose to sunset its NO_X Budget Trading Program rules by repealing 45CSR1 and 45CSR26 (which applied to EGUs) in their entirety. The units that participated in the NO_X Budget Trading Program in 45CSR1 and 45CSR26 will now be subject to the requirements of the CAIR trading program, as proposed in this action. The provisions for internal combustion engines and cement kilns have been recodified into separate sections of 45CSR40 (sections 45–40–90 and 45–40–100, respectively).

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

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles ($PM_{2.5}$) and/or

8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.,* budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 7, 2007, a State's CAIR FIPs are automatically withdrawn when EPA approves a SIP revision, in its entirely and without any conditions, 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, will automatically replace or supplement certain CAIR FIP provisions (*e.g.,* the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

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

On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of ''cogeneration unit'' and thus the applicability of the CAIR trading program to cogeneration units. There are no sources in West Virginia that are affected by the clarification of this definition, however, West Virginia must still revise their rules to address this clarification and submit the revised rule as a SIP revision.

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

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

CAIR establishes State-wide emission budgets for SO_2 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 SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 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 a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program;

2. Provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State;

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

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules. An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, EPA approval in full, without any conditions, of a CAIR full SIP revision causes the CAIR FIPs to be automatically withdrawn.

V. Analysis of West Virginia's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

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

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 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 SO_2 emissions in the CAIR trading program.

In today's action, EPA is proposing to approve West Virginia's SIP revision that adopts the budgets established for the State in CAIR. These budgets are: 74,220 tons for NO_X annual emissions from 2009 through 2014 and 61,850 tons from 2015 and thereafter; 26,859 tons for NO_X ozone season emissions from 2009 through 2014 and 26,525 tons from 2015 and thereafter; and 215,881 tons for SO_2 annual emissions from 2009 through 2014 and 151,117 tons from 2015 and thereafter. Additionally, the CAIR NO_X ozone season budget would be increased annually by 2,184 tons to account for NO_X SIP Call trading sources that are not EGUs under CAIR, but are included in the CAIR NO_X ozone season trading program. West Virginia's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

EPA notes that, in *North Carolina, id.* at 916–21, the Court determined, among other things, that the State SO_2 and NO_X budgets established in CAIR were arbitrary and capricious.[1] However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to ''temporarily preserve the environmental values covered by CAIR'' pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *Id.* at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina* v. *EPA,* Case No. 05–1224, DC Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO_2 and NO_X budgets for the CAIR trading programs) in order to ''temporarily preserve'' the environmental benefits achievable under the CAIR trading programs. *North Carolina,* 550 F.3d at 1178.

B. CAIR Cap-and-Trade Programs

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

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 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_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal

[1] The Court also determined that the CAIR trading programs were unlawful (*id.* at 906–8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921–23). For the same reasons that EPA is proposing approval of the provisions of West Virginia's SIP revision that use the SO_2 and NO_X budgets set in CAIR, EPA is also proposing approval, as discussed below, of West Virginia's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, West Virginia chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. West Virginia has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. Applicability Provisions

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Under the CAIR model trading rules, exemptions are provided for a unit otherwise covered by these general applicability criteria that is a cogeneration unit meeting a specified limit on its electricity sales or that is a solid waste incineration unit meeting a specified limit on combustion of fossil fuel. In the applicability section of each of West Virginia's CAIR trading rules, these exemptions are set forth in subsection 4.2, which begins with the phrase ''[w]ith limited exception'' and then goes on to state that units meeting the exemption criteria that are set forth are not CAIR units. EPA interprets this phrase to mean, in each of West Virginia's CAIR trading rules, that the provisions in subsection 4.2 that set forth the exemptions for cogeneration units and solid waste incineration units are the ''limited exceptions'' to the general applicability criteria in subsection 4.1 and that these provisions are not altered by the reference to ''limited exception'' and are intended to be the same as the exemptions set forth in the CAIR model trading rules. In other words, there are no exceptions to the general applicability criteria other than those listed in subsection 4.2, and all units meeting the exemption criteria in subsection 4.2 are not CAIR units. In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

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

West Virginia has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program, including the only unit (PPG Natrium Plant Unit 002) that opted into the State's NO_X SIP Call trading program. Under 40 CFR 51.123(aa)(2)(i), a State may include ''all non-EGUs subject to'' the State's NO_X SIP Call trading program. EPA believes that, although the unit voluntarily entered the State's NO_X SIP Call trading program, West Virginia properly included this unit in the CAIR NO_X ozone season trading program because the unit became subject to that trading program in 2003, installed emission controls for compliance with program requirements, and has continued to participate in the program through 2008. Consistent with the fact (discussed below) that West Virginia's SIP revision does not allow for opt-in units in the CAIR NO_X ozone season trading program, the SIP revision treats this unit like any other CAIR unit and does not give this unit the option of leaving the CAIR NO_X ozone season trading program.

Further, in connection with the inclusion, as CAIR units in the CAIR NO_X ozone season trading program, of non-EGUs in the State's NO_X SIP Call trading program, West Virginia's SIP revision includes (in subsection 2.37.b) a special definition of ''commence operation'' for such non-EGUs that become CAIR units after they have commenced operation. Section 45–2.37.b incorrectly references ''subsections 4.2 or 4.3,'' which were renumbered in the latest version of West Virginia's SIP revision as ''subsections 4.3 or 4.4.'' Because this appears to be a scrivener's error, EPA interprets the references to be to ''subsections 4.3 or 4.4.'' In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

D. NO_X Allowance Allocations

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

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

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

West Virginia has chosen to distribute NO_X annual and NO_X ozone season allowances in a manner substantively identical to that in the Part 96 model rule. The State's NO_X ozone season allocation provisions have been modified only to the extent necessary to add requirements associated with West Virginia's option to bring its non-EGUs into the CAIR NO_X ozone season trading program.

E. Allocation of NO_X Allowances From Compliance Supplement Pool

The CAIR establishes a CSP to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008

beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

West Virginia's compliance supplement pool is comprised of 4,898 allowances. West Virginia has chosen to modify the provisions of the CAIR NO_X annual model trading rule concerning the allocation of allowances from the CSP. West Virginia has chosen to distribute CSP allowances to any CAIR NO_X Annual unit in the State whose average annual NO_X emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and whose NO_X averaging plan (if the unit is included in an Acid Rain Program NO_X averaging plan under 40 CFR 76.11) for that year has an actual weighted average NO_X emission rate that is equal to or less than the actual weighted average NO_X emission rate for the year before the unit achieves NO_X emission reductions in 2007 or 2008.

F. Individual Opt-in Units

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

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

G. Additional Interpretations

1. References to NO_X Emitting Equipment in Section 45–40–9

West Virginia's SIP revision includes provisions (in sections 45–40–90 and 45–40–100) addressing NO_X ozone season emission reduction requirements for internal combustion engines and cement kilns, none of which sources are included in the CAIR NO_X ozone season trading program. The NO_X ozone season emission reduction requirements in these sections—which have been moved from the portion of West Virginia's rules addressing the NO_X SIP Call to the portion addressing CAIR—are identical to those previously approved in West Virginia's SIP for purposes of meeting requirements under the NO_X SIP Call, except that references to the NO_X SIP Call trading program are replaced by references to the CAIR NO_X ozone season trading program. EPA is therefore proposing to approve the recodification and revision of sections 45–40–90 and 45–40–100, as interpreted and clarified below.

Some of the language in section 45–40–90 could be interpreted as being inconsistent with the above-discussed CAIR trading program applicability provisions in section 45–40–4 in West Virginia's SIP revision. Specifically, subsections 90.1, 90.4.d, 90.4.g, and 90.4.i refer to stationary internal combustion engines and ''other significant NO_X emitting equipment'' located at facilities controlled by the same owner or operator. Section 90.1 states that both of these categories of equipment ''will not be * * * subject to the CAIR NO_X Ozone Season Trading Program requirements under sections 4 through 88.'' Subsections 90.4.g and 90.4.i include similar language stating the ''other significant NO_X emitting equipment'' will not be subject to trading program requirements; however, these sections clarify that the ''other significant NO_X emitting equipment'' that is not subject to the trading program requirements is only to equipment ''that is not a CAIR NO_X Ozone Season unit under section 4'' (*i.e.,* section 45–40–4). Subsections 90.1 and 90.4.d lack this clarifying language. Section 45–40–4 does not exempt from the CAIR NO_X ozone season trading program ''other significant NO_X emitting equipment'' covered by section 45–40–90. Therefore, if subsections 90.1 and 90.4.d. were interpreted to exempt ''other significant NO_X emitting equipment'' regardless of whether it is covered by the CAIR trading programs, these subsections would be inconsistent with section 45–40–4. In order for West Virginia to participate in the CAIR trading program as the State clearly intends, the applicability of the CAIR trading program to ''significant NO_X emitting equipment'' must be determined by section 45–40–4 (not section 45–40–90). EPA interprets all references to ''other significant NO_X emitting equipment'' in section 45–40–90 to be limited to such equipment that is not a CAIR NO_X Ozone Season unit under section 45–40–4. In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

2. Treatment of CAIR Allowances Allocated to Opt-in Units

Having chosen not to allow units to opt into the CAIR trading programs, West Virginia properly removed from its CAIR trading rules most of the provisions that are in the CAIR model trading rules and address CAIR opt-in units. However, while, as discussed above, West Virginia has the option of participating in the CAIR trading programs with or without allowing units in its jurisdiction to opt into the trading programs, other States also have that option, and some States have chosen to allow units in their respective jurisdictions to opt in. Consequently, any CAIR SO_2 unit, including those in West Virginia, may obtain CAIR SO_2 allowances allocated to a CAIR opt-in unit and use them to comply with the allowance-holding requirements in the CAIR SO_2 trading program. Under the CAIR SO_2 model trading rule, compliance with these requirements is determined in two steps: First, CAIR units that are also Acid Rain units must show compliance consistent with the Acid Rain Program allowance-holding requirement and so can use only title IV allowances; and second, all CAIR units must then show compliance with the CAIR trading program allowance-holding requirement using either title IV allowances or CAIR SO_2 allowances allocated to CAIR opt-in units. Language in the compliance provisions of the CAIR SO_2 model trading rule states explicitly when CAIR SO_2 allowances allocated to CAIR opt-in units can and cannot be used. West Virginia's SIP inadvertently omitted this language from section 45–41–54, apparently because the language refers to the CAIR

opt-in unit provisions. However, West Virginia's rule still requires compliance initially with the Acid Rain Program requirement set forth in sections 73.35 and 77.5 of the Acid Rain Program rules, which themselves require the use of only title IV allowances. Consequently, EPA interprets subsections 54.2.a.1 and 54.2.a.2 to allow only for the use of title IV allowances. Moreover, since West Virginia's rule defines ''CAIR SO_2 allowance'' as including allowances allocated to CAIR opt-in units, EPA interprets subsections 54.2.a.3, 54.2.b, 54.2.b.2, and 54.4.a to allow for the use of title IV allowances and allowances allocated to CAIR opt-in units. In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

VI. Proposed Action

EPA is proposing to approve West Virginia's full CAIR SIP revision submitted on April 22, 2008, as interpreted and clarified herein. EPA is proposing to approve the recodification and revision of provisions (in sections 45–40–90 and 45–40–100) addressing NO_X ozone season emission reduction requirements for internal combustion engines and cement kilns, none of which are included in the CAIR trading programs. Under the SIP revision, West Virginia is choosing to participate in the EPA-administered CAIR cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. The SIP revision, as interpreted and clarified herein, meets the applicable requirements of CAIR, set forth in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 29, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–13725 Filed 6–10–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0831–200825(b); FRL–8915–6]

Approval and Promulgation of Implementation Plans Georgia: State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Georgia Department of Natural Resources, through the Georgia Environmental Protection Division, on June 25, 2008. The revisions include modifications to Georgia's Air Quality Rules found at Chapters 391–3–1–.01, and 391–3–1–.02, pertaining to ''Definitions,'' and ''Emission Limitations and Standards,'' respectively. This action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0831, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0831,'' Regulatory Development Section,