

addresses, please see the proposed rule published at 74 FR 33193, July 10, 2009.

FOR FURTHER INFORMATION CONTACT: James F. Burris, MD, Chief Consultant, Geriatrics and Extended Care State Home Construction Grant Program (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-6774 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA published a document in the **Federal Register** on July 10, 2009, at 74 FR 33192, amending its regulations regarding grants to States for construction or acquisition of State homes to update the maximum number of nursing home and domiciliary beds designated for each State, and to amend the definition of "State." This document corrects an error in the preamble of the proposed rule in the maximum number of beds for the State of Vermont. However, in the regulatory text section of the proposed rule contains the correct number of 142 beds as shown in the table.

In FR Doc. E9-16341, published July 10, 2009, (74 FR 33192), make the following correction: On page 33194, in the third column of the table "New max # of beds (based on 2020 projection)" in the entry for Vermont, remove the number "1312" and add, in its place, "142".

William F. Russo,

Director, Regulations Management.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 96

[EPA-R04-OAR-2009-0454; FRL-8942-3]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment and Natural Resources on June 20, 2008. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR). Although the DC Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is

continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO₂ and NO_x for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. In the full SIP revision that EPA is proposing to approve, North Carolina will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the full SIP revision, as interpreted and clarified herein, as fully implementing the CAIR requirements for North Carolina. Consequently, this action will also cause the CAIR Federal Implementation Plans (CAIR FIPs) concerning SO₂, NO_x annual, and NO_x ozone season emissions by North Carolina sources to be automatically withdrawn.

DATES: Comments must be received on or before September 8, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-0454, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* benjamin.lynorae@epa.gov.
3. *Fax:* 404-562-9019.
4. *Mail:* EPA-R04-OAR-2009-0454, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2009-0454. 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 through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. 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. 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 <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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional

Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Action is EPA Proposing to Take?
- II. What is the Regulatory History of CAIR and the CAIR FIPs?
- III. What are the General Requirements of CAIR and the CAIR FIPs?
- IV. What are the Types of CAIR SIP Submittals?
- V. Analysis of North Carolina's CAIR SIP Submittal
 - A. State Budgets for Allowance Allocations
 - B. CAIR Cap-and-Trade Programs
 - C. Applicability Provisions
 - D. NO_x Allowance Allocations
 - E. Allocation of NO_x Allowances From Compliance Supplement Pool
 - F. Individual Opt-In Units
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

EPA is proposing to approve, the full SIP revision, submitted by North Carolina on June 20, 2008, as interpreted and clarified herein¹ as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. As a consequence of the SIP approval, the CAIR FIPs concerning SO₂, NO_x annual, and NO_x ozone season emissions for North Carolina are automatically withdrawn. If this proposal is finalized, the automatic withdrawal will be reflected in the rule text that will accompany the final rulemaking notice,

¹ On May 11, 2009, North Carolina submitted a letter of clarification related to this SIP revision. This letter clarifies the reference to "NO_x ozone season trading program" in 15A North Carolina Administrative Code (NCAC) 02D.2401(b)(3)(4) was intended to refer to the CAIR NO_x ozone season trading program. North Carolina also clarified the reference to "oil" in 15A NCAC 02D.2401(b)(3)(B) to mean fuel oil as that term is used in 40 CFR 96.4(b)(1)(i). Further, North Carolina acknowledged that the reference to 40 CFR 96.4(b)(1)(iii) in 15A NCAC 02D.2401(b)(3)(C) is not a restriction on hours of operation but rather provides how a unit's potential NO_x mass emissions shall be calculated.

and will delete and reserve the provisions in Part 52 that establish the CAIR FIPs for North Carolina sources.

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 SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_x for the ozone season (May 1 to September 30). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

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

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone season trading programs, as appropriate. The CAIR FIP SO₂, NO_x annual, and

NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to effectively create a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007, a State's CAIR FIP is automatically withdrawn when EPA approves a SIP revision, in its entirety and without any conditions, as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding portions of the FIP are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (*e.g.*, the methodology for allocating NO_x allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM_{2.5} and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements. On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of "cogeneration unit" and thus the applicability of the CAIR trading program to cogeneration units.

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

completing that action. *Id.* Therefore, CAIR and the CAIR FIP are currently in effect in North Carolina.

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

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

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs.

IV. What are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. 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 SO₂, NO_x annual, or NO_x ozone season trading programs under the opt-in provisions in the model rules.

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

V. Analysis of North Carolina'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 pounds per million British thermal unit (lb/mmBtu) for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_x annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO₂ budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA.

Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of SO₂ emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO₂ emissions in the CAIR trading program.

In today's action, EPA is proposing to approve North Carolina's SIP revision that adopts the budgets established for the State in CAIR. These budgets are 62,183 tons for NO_x annual emissions from 2009 through 2014, and 51,819 tons for NO_x ozone season emissions from 2009 through 2014, and 23,660 tons from 2015 and thereafter; and 137,342 tons for SO₂ annual emissions from 2010 through 2014, and 96,139 tons from 2015 and thereafter. Additionally, because North Carolina has chosen to include all non-EGUs in the State's NO_x SIP call trading program, the CAIR NO_x ozone season budget will be increased annually by 2,443 tons to account for such NO_x SIP Call trading sources. North Carolina'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*, 531 F.3d at 916–21, the Court determined, among other things, that the State SO₂ and NO_x budgets established in CAIR were arbitrary and capricious.² However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to “temporarily preserve the environmental values covered by CAIR” pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina*, 550 F.3d 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

² The Court also determined that the CAIR trading programs were unlawful (*Id.* at 906–8) and that the treatment of CAA title IV allowances in CAIR was unlawful (*Id.* at 921–23). For the same reasons that EPA is approving the provisions of North Carolina's SIP revision that use the SO₂ and NO_x budgets set in CAIR, EPA is also approving, as discussed below, North Carolina'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.

in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO₂ and NO_x budgets for the CAIR trading programs) in order to "temporarily preserve" the environmental benefits achievable under the CAIR trading programs.

On May 7, 2009, EPA participated in a teleconference with North Carolina and requested several clarifications. EPA received a letter from North Carolina dated May 8, 2009, that provided the requested clarifications. Specifically, in the May 8, 2009, letter the State clarified references in North Carolina's rule to "CAIR NO_x Ozone Season trading program" and "fuel oil." In addition, North Carolina acknowledged that the reference to 40 CFR 96.4(b)(1)(iii) in 15A North Carolina Administrative Code (NCAC) 02D .2401(b)(3)(c) is not a restriction on hours of operation, but rather provides how a unit's potential NO_x mass emissions will be calculated.

B. CAIR Cap-and-Trade Programs

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

The provisions of the CAIR SO₂ model rule are also similar to the provisions of the NO_x annual and ozone season model rules. However, the SO₂ model rule is coordinated with the ongoing Acid Rain SO₂ cap-and-trade

program under CAA title IV. The SO₂ model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO₂ cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO₂ cap-and-trade program.

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

In the SIP revision, North Carolina chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. North Carolina has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO₂, 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 megawatt electrical (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 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.

North Carolina 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.

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.

North Carolina has chosen to distribute NO_x annual and NO_x ozone season allowances with its own methodology. North Carolina has chosen to distribute NO_x annual allowances by submitting the table adopted in 15A NCAC 02D .2403(a) which establishes the North Carolina CAIR NO_x annual allocation for existing units. North Carolina has chosen to establish a new unit set aside for each control period. For CAIR NO_x emissions for each control period, CAIR NO_x allowances available for allocation for new unit set asides will be 2,638 tons for 2009–2014 and 1,154 tons for 2015 and thereafter.

North Carolina has chosen to distribute NO_x ozone season allowances by submitting the table adopted in 15A NCAC 02D .2405(a)(1) which establishes the North Carolina CAIR NO_x ozone season allocations for existing units. North Carolina has chosen to establish a new unit set aside for each control period. For CAIR NO_x ozone season emissions, allowances available for allocation for new unit set asides will be 1,234 tons for 2009–2014 and 555 tons for 2015 and thereafter.

The State's NO_x ozone season allocation provisions have been modified to add requirements associated with North Carolina's option to bring its non-EGUs into the CAIR NO_x ozone season trading program. The State has chosen to distribute CAIR NO_x ozone season allowances to non-EGUs by submitting a table adopted in 15A NCAC 02D .2405(a)(2).

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.

Consistent with the flexibility given to States in the model trading rule, North Carolina has not chosen to modify the provisions of the CAIR NO_x annual model trading rule concerning the allocation of allowances from the CSP. North Carolina has not chosen to adopt CSP provisions since the State does not have any allowances available to allocate under the CSP provisions.

F. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired

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.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_x annual trading program. The North Carolina rule allows for both the opt-in allocation methods as specified in 40 CFR part 96, Subpart II of the CAIR NO_x annual trading program.

Consistent with the flexibility given to the States in the FIPs, North Carolina has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR NO_x ozone season trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 96 Subpart III of the CAIR NO_x ozone season trading program.

Consistent with the flexibility given to the States in the FIPs, North Carolina has chosen to allow certain non-EGUs to opt into the CAIR SO₂ trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 96 Subpart III of the CAIR SO₂ trading program.

VI. Proposed Action

EPA is proposing to approve, as interpreted and clarified herein, North Carolina's full CAIR SIP revision

submitted on June 20, 2008. Under the approved SIP revision, North Carolina is choosing to participate in the EPA-administered CAIR cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. The approved SIP revision, as interpreted and clarified herein, meets the applicable requirements of CAIR, which are set forth in 40 CFR 51.123(o) and (aa), with regard to NO_x annual and NO_x ozone season emissions, and 40 CFR 51.124(o), with regard to SO₂ emissions. If this proposed approval for North Carolina's full CAIR SIP revision is finalized, EPA will promulgate, in conjunction with the final rule for this action, rules implementing the automatic withdrawal—in accordance with 40 CFR 52.35 and 52.36—of the CAIR FIPs for SO₂, NO_x annual, and NO_x ozone season emissions for North Carolina sources.

VII. Statutory and Executive Order Reviews

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 96

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

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

Dated: July 29, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.
[FR Doc. E9-18999 Filed 8-6-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2009-013; Docket 2009-0026;
Sequence 1]

RIN 9000-AL40

Federal Acquisition Regulation; FAR Case 2009-013, Nonavailable Articles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the list of nonavailable articles at FAR 25.104(a). The Councils also request public comment as to whether some articles on the list of nonavailable articles are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality and should therefore be removed from the list.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before October 6, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2009-013 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR case 2009-013" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case FAR case 2009-013. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR case 2009-013" on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case FAR case 2009-013 in all correspondence related to this case. All comments received will be

posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case FAR case 2009-013.

SUPPLEMENTARY INFORMATION:

A. Background

The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

A nonavailability determination has been made for the articles listed in FAR 25.104(a). As stated at FAR 25.103, this determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

Before acquisition of an article on the list, the procuring agency is responsible for conducting market research appropriate to the circumstances, including seeking domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

The class determination for articles on the list does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation.

The head of the contracting activity may make an individual determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting