

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R03-OAR-2009-0370; FRL-9090-2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Clean Air Interstate Rule; NO_x SIP Call Rule; Amendments to NO_x Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR) and modifies other requirements in Pennsylvania's SIP that interact with CAIR including: The termination of Pennsylvania's NO_x Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement kilns; provisions for small sources of NO_x in the Philadelphia 8-hour ozone nonattainment area; and emission reduction credits. EPA is determining that the SIP revision fully implements the CAIR requirements for Pennsylvania. 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 SO₂ and 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 SIP revision that EPA is approving, Pennsylvania will meet CAIR requirements by participating in these cap-and-trade programs. EPA is approving the SIP revision, with the exceptions noted, as fully implementing the CAIR requirements for Pennsylvania. 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(CAIR FIPs) concerning SO₂, NO_x annual, and NO_x ozone season emissions by Pennsylvania sources to be automatically withdrawn.

DATES: *Effective Date:* The final rule is effective on December 10, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0370. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

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I. What Action Did EPA Propose?

On September 24, 2009 (74 FR 48695), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a revision to the Pennsylvania SIP that addresses EPA's CAIR requirements and modifies other requirements in Pennsylvania's SIP that interact with CAIR including: The termination of Pennsylvania's NO_x Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement kilns; provisions for small sources of NO_x in the Pennsylvania portion of the

Philadelphia 8-hour ozone nonattainment area; and emission reduction credits.

II. Summary of Pennsylvania SIP Revision

On May 23, 2008, the Pennsylvania Department of Environmental Protection (PADEP) submitted a full CAIR SIP revision to meet the requirements of CAIR, which was promulgated on May 12, 2005 (70 FR 25162), and subsequently revised on April 28, 2006, and December 13, 2006. The SIP revision consisted of amendments to Pennsylvania regulations codified at 25 Pa. Code Chapters 121, 129, and 145. The SIP revision addresses all the requirements of the 40 CFR part 96 model rules set forth in the May 12, 2005 CAIR rulemaking. In addition, the SIP revision modifies other requirements in Pennsylvania's SIP that interact with CAIR. A detailed discussion of the CAIR requirements, the CAIR history (including the CAIR remand), Pennsylvania's CAIR submittal, the other modifications in the SIP revision that interact with CAIR, and EPA's rationale for approval of the Pennsylvania SIP revision may be found in the NPR and will not be repeated here. No comments were received.

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.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. *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, D.C. 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

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 approving the provisions of Pennsylvania'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.

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.

III. What Is the Final Action?

EPA is approving the Pennsylvania CAIR SIP revision submitted on July 23, 2008. Under the SIP revision, Pennsylvania will participate in the EPA-administered cap-and-trade programs for NO_x annual, NO_x ozone season, and SO₂ annual emissions. The SIP revision meets the applicable requirements 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. As a consequence of the SIP approval, the CAIR FIPs for Pennsylvania are automatically withdrawn, in accordance with the automatic withdrawal provisions of EPA's November 2, 2007 rulemaking (72 FR 62338). The automatic withdrawal is reflected in the rule text that accompanies this notice and deletes and reserves the provisions in Part 52 that establish the CAIR FIPs for Pennsylvania sources.

The SIP revision also modifies other requirements in Pennsylvania's SIP that interact with CAIR including: The termination of Pennsylvania's NO_x Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement kilns; provisions for small sources of NO_x in the Pennsylvania portion of the Philadelphia 8-hour ozone nonattainment area; and emission reduction credits.

IV. What Is the Effective Date?

EPA finds that there is good cause for this approval to become effective upon publication because a delayed effective date is unnecessary due to the nature of the approval, which allows the Commonwealth, as indicated in the NPR for this rulemaking, to use its own methodology for distribution and timing of NO_x allowances. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by

the agency for good cause found and published with the rule."

CAIR SIP approvals relieve states and CAIR sources within states from being subject to provisions in the CAIR FIPs that otherwise would apply to them, allowing states to implement CAIR based on their SIP-approved state rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Pennsylvania's relief from these obligations provides good cause to make this rule effective immediately upon publication, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the Commonwealth of Pennsylvania and CAIR sources within the Commonwealth, do not need time to adjust and prepare before the rule takes effect.

V. Statutory and Executive Order Reviews

A. General Requirements

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 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.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed,

and shall not postpone the effectiveness of such rule or action.

This action to approve the Pennsylvania SIP revision to meet the requirements of CAIR and modify associated provisions that interact with CAIR may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 25, 2009.

Shawn M. Garvin,
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ a. Revising entries for Title 25, Chapter 121, Section 121.1, Chapter

129, Sections 129.201, 129.202, and 129.204; Subchapter B, Section 145.113, and Subchapter C, Section 145.143.

■ b. Adding, in order of Section number, entries for Title 25, Chapter 145, Subchapter A, Section 145.8; Subchapter D, Sections 145.201 through 145.205, Sections 145.211 through 145.213, and Sections 145.221 through 145.223.

The amendments read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(c)	*	*	*	*
(1)	*	*	*	*

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
TITLE 25. ENVIRONMENTAL PROTECTION ARTICLE III. AIR RESOURCES				
CHAPTER 121. GENERAL PROVISIONS				
Section 121.1	Definitions	4/12/08	12/10/09 [Insert page number where the document begins].	Add definition for “vintage or vintage year.”
CHAPTER 129. STANDARDS FOR SOURCES ADDITIONAL NO_x REQUIREMENTS				
Section 129.201	Boilers	4/12/08	12/10/09 [Insert page number where the document begins].	Revised section.
Section 129.202	Stationary combustion turbines	4/12/08	12/10/09 [Insert page number where the document begins].	Revised section.
Section 129.204	Emission accountability	4/12/08	12/10/09 [Insert page number where the document begins].	Revised section.
CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION Subchapter A. NO_x Budget Trading Program General Provisions				
Section 145.8	Transition to CAIR NO _x Trading Programs.	4/12/08	12/10/09 [Insert page number where the document begins].	New section.
Subchapter B. Emissions of NO_x From Stationary Internal Combustion Engines				
Section 145.113	Standard requirements	4/12/08	12/10/09 [Insert page number where the document begins].	New subsection d.
Subchapter C. Emissions of NO_x From Cement Manufacturing				
Section 145.143	Standard requirements	4/12/08	12/10/09 [Insert page number where the document begins].	
Subchapter D. CAIR NO_x and SO₂ Trading Programs—General Provisions				
Section 145.201	Purpose	4/12/08	12/10/09 [Insert page number where the document begins].	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Section 145.202	Definitions	4/12/08	12/10/09	[Insert page number where the document begins].
Section 145.203	Applicability	4/12/08	12/10/09	[Insert page number where the document begins].
Section 145.204	Incorporation of Federal regulations by reference.	4/12/08	12/10/09	[Insert page number where the document begins].

ADDITIONAL REQUIREMENTS FOR CHAPTER 127 EMISSION REDUCTION CREDIT PROVISIONS

Section 145.205	Emission reduction credit provisions.	4/12/08	12/10/09	[Insert page number where the document begins].
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ADDITIONAL REQUIREMENTS FOR CAIR NO_x ANNUAL TRADING PROGRAM

Section 145.211	Timing Requirements for CAIR NO _x allowance allocations.	4/12/08	12/10/09	[Insert page number where the document begins].
Section 145.212	CAIR NO _x allowance allocations	4/12/08	12/10/09	[Insert page number where the document begins].
Section 145.213	Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170–96.175.	4/12/08	12/10/09	[Insert page number where the document begins].

ADDITIONAL REQUIREMENTS FOR CAIR NO_x OZONE SEASON TRADING PROGRAM

Section 145.221	Timing requirements for CAIR NO _x ozone season allowance allocations.	4/12/08	12/10/09	[Insert page number where the document begins].
Section 145.222	CAIR NO _x Ozone Season allowance allocations.	4/12/08	12/10/09	[Insert page number where the document begins].
Section 145.223	Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370–96.375.	4/12/08	12/10/09	[Insert page number where the document begins].

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§ 52.2040 [Removed and Reserved]

■ 3. Section 52.2040 is removed and reserved.

§ 52.2041 [Removed and Reserved]

■ 4. Section 52.2041 is removed and reserved.

[FR Doc. E9–29216 Filed 12–9–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, 415, 485, and 498

[CMS–1413–CN3]

RIN 0938–AP40

Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Corrections

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

ACTION: Final rule; correction.

SUMMARY: This document corrects several technical and typographical errors in the final rule with comment period that appeared in the November 25, 2009, **Federal Register** entitled “Medicare Program; Payment Policies

Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010”.

DATES: *Effective Date:* This correction is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E9–26502 of November 25, 2009 (74 FR 61738) (hereinafter referred to as the CY 2010 PFS final rule with comment period), there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section of this notice. The provisions of this notice are effective as if they had been included in the CY 2010 PFS final rule with comment period. Accordingly, the corrections are effective January 1, 2010.

II. Summary of Errors

A. Errors in the Preamble

On page 61738, we are correcting the figure for the CY 2010 conversion factor (CF). This change results from a