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# Approval and Promulgation of Implementation Plans; Texas; Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program

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[Federal Register: July 30, 2007 (Volume 72, Number 145)]

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ENVIRONMENTAL PROTECTION AGENCY  
40 CFR Parts 52 and 97  
[EPA-R06-OAR-2007-0252; FRL-8446-3]

Approval and Promulgation of Implementation Plans; Texas; Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program

AGENCY: Environmental Protection Agency (EPA).  
ACTION: Direct final rule.

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SUMMARY: EPA is taking a direct final action to approve a revision to the Texas State Implementation Plan (SIP) submitted by the State of Texas on August 4, 2006, as the Texas Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO<sub>x</sub>) Annual Abbreviated SIP. The abbreviated SIP revision EPA is approving includes the Texas methodologies for allocation of annual NO<sub>x</sub> allowances for Phase 1 of CAIR, the control periods 2009 through 2014, and for allocating allowances from the compliance supplement pool (CSP) in the CAIR NO<sub>x</sub> annual trading program. EPA has determined that the Texas CAIR NO<sub>x</sub> Annual Abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision. Upon the

effective date of approval of the Texas CAIR NO<sub>x</sub> Annual Abbreviated SIP revision, EPA by ministerial action will note in the Texas CAIR NO<sub>x</sub> Annual Federal Implementation Plan's (FIP) incorporated regulations that the Texas rules for annual NO<sub>x</sub> allowances under Phase 1 of CAIR and allocating allowances from the C apply, rather than the Federal FIP rules.

The intended effect of this action is to reduce NO<sub>x</sub> emissions from the State of Texas that are contributing to nonattainment of the PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS or standard) in downwind states. This action is being taken under section 110 of the Federal Clean Air Act (the Act or CAA)

**DATES:** This rule is effective on September 28, 2007 without further notice, unless EPA receives relevant adverse comment by August 29, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2007-0252, by one of the following methods:

(1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

(2) E-mail: Mr. Jeff Robinson at [robinson.jeffrey@epa.gov](mailto:robinson.jeffrey@epa.gov). Please also cc the person listed in the FOR FURTHER INFORMATION CONTACT paragraph below.

(3) U.S. EPA Region 6 ``Contact Us'' Web site: <http://epa.gov/region6/r6coment.htm>. Please click on ``6PD'' (Multimedia) and select ``Air'' before submitting comments.

(4) Fax: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), a fax number 214-665-6762.

(5) Mail: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202-2733.

(6) Hand or Courier Delivery: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted or between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R06-OAR-2007-0252. EPA's policy is that all comments received will be included in the public docket without change and may be made available online <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an ``anonymous access'' system which means that 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 along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of 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 docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the FOR FURTHER INFORMATION CONTACT paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA

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Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

SUPPLEMENTARY INFORMATION: Throughout this document wherever, any reference to "we," "us," or "our" is used, we mean EPA.

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### I. What Action is EPA Taking?

On April 4, 2006, the State of Texas submitted a revision to the Texas SIP. The submittal consists of new regulations to implement the NO<sub>x</sub> Annual and SO<sub>2</sub> CAIR programs in the state.

The affected state regulations that we are approving today as part of the Texas CAIR NO<sub>x</sub> Annual Abbreviated SIP are 30 TAC,

Chapter 101, Subchapter H, Division 7, sections 101.503, 101.504(a)(1), 101.504(b), 101.506(a)(1), 101.506(b)(1), 101.506(c)-(f), and 101.508

EPA is taking a direct final action to approve the State's NO<sub>x</sub> annual allocation methodology for Phase 1 (the control periods 2009 through 2014) and the State's methodology for allocating the compliance supplement pool (CSP) in the CAIR NO<sub>x</sub> annual

trading program, as an abbreviated revision to the Texas SIP. EPA is approving the Texas abbreviated SIP revision as meeting 40 CFR 51.123(p)(1) and (p)(2). We will be taking action on the remaining parts of the Texas NO<sub>x</sub> Annual and SO<sub>2</sub> CAIR SIP

revision submittal at a later date and in future Federal Registers. Texas is not subject to the CAIR NO<sub>x</sub> ozone season trading

program. Please see the Technical Support Document (TSD) for further information. The TSD is available as specified in the section of this document identified as ADDRESSES.

The provisions of the Texas CAIR NO<sub>x</sub> Annual Federal Implementation Plan (FIP) at 40 CFR 52.2283 require owners and operators of NO<sub>x</sub> sources located in Texas to meet the Federal NO<sub>x</sub> annual trading program found at 40 CFR part 97.

This Federal trading program's rules include provisions at 40 CFR 97.144(a) and (b) that if EPA approves the Texas abbreviated SIP

revision for NO<sub>x</sub> annual and CSP allocation methodologies, then the Federal NO<sub>x</sub> annual and CSP allocation methodologies no longer apply. Instead, if EPA approves the Texas NO<sub>x</sub> annual allocation methodology into the Texas SIP, then EPA under 40 CFR 52.2283 and 97.144(a) will not make allocations for the CAIR NO<sub>x</sub> sources in Texas but will use the Texas SIP rules for allocating annual NO<sub>x</sub> allowances to sources in Texas for Phase 1 of CAIR (2009-2014). The Texas NO<sub>x</sub> methodology for allocating the CSP in the CAIR NO<sub>x</sub> Annual Trading Program will be used to allocate allowances from the CSP, instead of the federal methodology for allocating allowances from the CSP. EPA under 40 CFR 52.2283 and 97.144(b) will not make allocations for the CSP for CAIR NO<sub>x</sub> sources in Texas and will record the allocations of the Texas CSP made under the approved SIP revision.

If EPA's direct final action approving the Texas abbreviated SIP becomes effective, then EPA is not required to take any rulemaking action to change the Federal CAIR NO<sub>x</sub> annual trading program in 40 CFR part 97 or to change the Texas CAIR FIP for NO<sub>x</sub> annual emissions in 40 CFR 52.2283. Rather EPA, by ministerial action simply notes in Appendix A, 1 and 2, to Subpart EE of 40 CFR part 97, that Texas has an approved SIP revision for NO<sub>x</sub> annual allowances for Phase 1 and for NO<sub>x</sub> allowance allocations from the Texas CSP. Since the Federal CAIR NO<sub>x</sub> annual trading program's rules at 40 CFR part 97 provide for automatic revision of the Texas CAIR FIP for annual NO<sub>x</sub> emissions upon approval of such an abbreviated SIP revision, the Texas rules for annual NO<sub>x</sub> allowances would apply, rather than the Federal rules, upon the effective date of approval.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on September 28, 2007 without further notice unless we receive relevant adverse comments by August 29, 2007. If we receive relevant adverse comments, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we will adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

EPA promulgated the 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 national ambient air quality standards (NAAQS) for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub> formation. For jurisdictions that contribute significantly to downwind PM<sub>2.5</sub> nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO<sub>2</sub> and annual State-wide emission reduction requirements for NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets statewide emission reduction requirements for NO<sub>x</sub> for the ozone season (defined at 40 CFR 97.302 as May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered

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cap-and-trade programs or by adopting and submitting for EPA approval any other control measures.

EPA found that Texas significantly contributed to nonattainment of the PM<sub>2.5</sub> standard in Illinois, resulting in Texas being subject to the SO<sub>2</sub> and annual NO<sub>x</sub> requirements of CAIR. There are no punitive consequences for Texas failing to submit SO<sub>2</sub> and NO<sub>x</sub> Annual CAIR SIPs.

CAIR sets forth what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Act with regard to interstate transport for the 8-hour ozone and PM<sub>2.5</sub> NAAQS. EPA made national findings, effective May 25, 2005, that the affected States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM<sub>2.5</sub> NAAQS. These May 25, 2005, 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. See 40 CFR 52.35 and 52.36. Each CAIR State is subject to the FIP until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR

SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone-season trading programs, as appropriate, found at 40 CFR part 97. The CAIR FIPs' SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season) in all States covered by the CAIR FIPs' or SIPs' trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO<sub>x</sub> allowances to sources in the state), while the CAIR FIPs remain in place for all other provisions. See 40 CFR 51.123(p)(1)-(3) 71 FR 25328 and 25339 (April 28, 2006).

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM<sub>2.5</sub> and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements. On December 13, 2006, EPA published minor, non-substantive revisions that serve to clarify CAIR and the CAIR FIP.

### III. What Are the General Requirements of CAIR and the CAIR FIP?

CAIR establishes State-wide emission budgets for SO<sub>2</sub> and NO<sub>x</sub> and is to be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009 and continues through 2014, while the first phase of SO<sub>2</sub> reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO<sub>x</sub> and SO<sub>2</sub> starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or, (2) adopting other control measures of the State's choice and demonstrating that such control measures will result in compliance with the applicable State SO<sub>2</sub> and NO<sub>x</sub> budgets.

The May 12, 2005 and April 28, 2006 CAIR 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. The December 13, 2006, revisions to CAIR and the CAIR FIPs were non-substantive and, therefore, do not affect EPA's evaluation of a State's SIP revision.

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<sub>x</sub> SIP Call trading programs in their CAIR NO<sub>x</sub> ozone season trading programs. Texas was not subject to the NO<sub>x</sub> SIP Call and is not subject to the NO<sub>x</sub> ozone season requirements of CAIR; therefore, the second exception is not applicable.

#### IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measure 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. The provisions in the abbreviated SIP revision, if approved into a State's SIP, will not replace that State's CAIR FIP; however, the requirements for the CAIR FIPs at 40 CFR part 52 incorporate the provisions of the Federal CAIR trading programs in 40 CFR part 97. The Federal CAIR trading programs in 40 CFR part 97 provide that whenever EPA approves an abbreviated SIP revision, the provisions in the abbreviated SIP revision will be used in place of or in conjunction with, as appropriate, the corresponding provisions in 40 CFR part 97 the State's CAIR FIP (e.g., the NO<sub>x</sub> allowance allocation methodology).

A State submitting an abbreviated SIP revision, may submit limited SIP revisions to tailor the CAIR FIP's cap-and-trade programs to the state submitting the revision. An abbreviated SIP revision may establish certain applicability and allowance allocation provisions instead of in conjunction with the corresponding provisions in the CAIR FIP's rule in that State. Specifically, an abbreviated SIP revision may:

- (1) Include NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP's NO<sub>x</sub> ozone season trading program;
- (2) Provide for allocation of NO<sub>x</sub> annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;
- (3) Provide for allocation of NO<sub>x</sub> annual allowances from the CSP by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; or
- (4) Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP's cap-and-trade programs under the optional provisions in the CAIR FIP's rules.

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

Abbreviated SIP revisions can be submitted in lieu of, or as part

of, CAIR full SIP revisions. States may want to designate part of the full SIP as an

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abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO<sub>x</sub> allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, Texas asked EPA to process the submittal as an abbreviated SIP revision while the Texas Legislature considered changes in the State's CAIR authority. Texas anticipates submitting a revised NO<sub>x</sub> and SO<sub>2</sub> CAIR SIP later for full approval by EPA.

#### V. What Is EPA's Analysis of Texas's CAIR NO<sub>x</sub> Annual Abbreviated SIP Submittal?

##### A. State Budget for NO<sub>x</sub> Annual Allowance Allocations

The CAIR NO<sub>x</sub> annual budget for Texas was developed from historical heat input data for EGUs. Using these data, EPA calculated annual 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<sub>x</sub> budgets for 2009-2014 and for 2015 and thereafter, respectively. EPA derived the Texas NO<sub>x</sub> annual budget from the regional budgets using Texas heat input data adjusted by fuel factors. The CAIR SIP requirements and the Texas CAIR NO<sub>x</sub> annual FIP establish the budgets for Texas as 181,014 tons of NO<sub>x</sub> annual emissions for 2009-2014 and 150,845 tons of NO<sub>x</sub> annual emissions in 2015 and thereafter. Texas's submitted rules at 30 TAC, Chapter 101, Subchapter H, Division 7, section 101.503(a) establish that the Texas NO<sub>x</sub> annual budgets are as listed in 40 CFR 51.123 and 96.140 (181,014 tons in 2009-2014 and 150,845 tons in 2015 and thereafter). The Texas abbreviated SIP revision, being approved today, does not affect these budgets, which are total amount of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the Texas CAIR NO<sub>x</sub> Annual FIP. In short, the Texas abbreviated SIP revision only affects allocations of NO<sub>x</sub> annual allowances under the established budget for 2009-2014.

##### B. CAIR NO<sub>x</sub> Annual Cap-and-Trade Program

The CAIR NO<sub>x</sub> annual FIPs for the States largely mirror

the structure of the NO<sub>x</sub> SIP Call model-trading rule in 40 CFR part 96 subparts A through I. While the provisions of the NO<sub>x</sub> annual FIPs are similar, there are some differences. For example, the NO<sub>x</sub> Annual FIPs provide for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO<sub>x</sub> annual emissions.

EPA used the CAIR model trading rules as the basis for the SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs incorporated by reference into the States' CAIR FIPs. The CAIR FIPs' trading programs' rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO<sub>2</sub>, NO<sub>x</sub> annual trading, and NO<sub>x</sub> ozone season trading rules and the respective CAIR FIPs' trading programs are designed to work together as integrated SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs.

Texas is subject to the CAIR FIP for PM<sub>2.5</sub>. This PM<sub>2.5</sub> CAIR FIP for Texas, 40 CFR 52.2283 and 52.2284, requires owners or operators of each NO<sub>x</sub> and SO<sub>2</sub> source located in Texas to meet the requirements of the Federal CAIR NO<sub>x</sub> Annual and SO<sub>2</sub> Trading Programs in 40 CFR part 97. Consistent with the flexibility given to States, States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of its CAIR FIP's trading programs. T August 4, 2006, submission from Texas is such an abbreviated SIP revision and is for the NO<sub>x</sub> annual trading program.

#### C. Applicability Provisions for Non-EGU NO<sub>x</sub> SIP Call Sources

In general, the CAIR FIPs' trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 1 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. Because Texas was not included in the NO<sub>x</sub> SIP Call trading program and is not subject to the NO<sub>x</sub> ozone season provisions of CAIR, Texas does not have or need the option of expanding the applicability provisions of the CAIR NO<sub>x</sub> Ozone Season Trading Program.

#### D. NO<sub>x</sub> Annual Allowance Allocations

Under the NO<sub>x</sub> allowance allocation methodology in the CAIR model trading rules and in the CAIR FIPs' NO<sub>x</sub> annual trading program, NO<sub>x</sub> annual 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 CA model trading rules and the CAIR FIPs' NO<sub>x</sub> annual trading program also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIPs' provisions provide States with the flexibility to establish a different NO<sub>x</sub> allowance allocation methodology that will be used to allocate allowances to sources in a State 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<sub>x</sub> allowance allocation methodologies, States have flexibility with regard to:

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

Consistent with the flexibility given to States in their CAIR FIP provisions, Texas has chosen to replace the provisions of the Texas CAIR NO<sub>x</sub> Annual FIP concerning the allocation of NO<sub>x</sub> annual allowances for Phase 1 (2009-2014) with its own methodology. The Texas Commission on Environmental Quality was directed by House Bill 2481 of the 79th Texas Legislature to establish regulations that will allocate NO<sub>x</sub> allowances at no cost to the CAIR subject units in Texas. Accordingly, the TCEQ has adopted provisions establishing the annual NO<sub>x</sub> allocation methodology at 30 TAC, Chapter 101, Subchapter H, Division 7, sections 101.503, 101.504, and 101.506.

Section 101.503(a) establishes that the Texas NO<sub>x</sub> Annual budgets are as listed in 40 CFR 96.140 (181,014 tons in 2009-2014 and 150,845 tons in 2015 and thereafter). Additionally, section 101.503(b) establishes that the Texas NO<sub>x</sub> Annual Trading Program will have a new unit set-aside of 9.5 percent of the NO<sub>x</sub> trading budget for both Phase 1 and Phase 2 of CAIR. (We are not taking action today on the Phase 2 allowance allocation methodology. Please see the TSD for further information.)

Section 101.504 establishes the dates by which the TCEQ Executive Director must submit NO<sub>x</sub> annual allocations to EPA for recordation in CAIR compliance accounts. Per section 101.504(a)(1), the TCEQ Executive Director will submit

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NO<sub>x</sub> allowances for units commencing operation before January 1, 2001 (referred to as existing units), by October 31, 2006 for the 2009-2014 control periods. Allocations for these existing units will be distributed proportionally based on the unit's share of the total baseline heat input according to section 101.506(c). The baseline heat input, calculated per section 101.506(b)(1), for each unit is the average of the three highest amounts of the unit's adjusted control period heat input for 2000-2004. A unit's adjusted control period heat input is found by multiplying the control period heat input by a fuel adjustment factor as follows: 0.90 if the unit is coal-fired during the year; 0.50 if the unit is natural gas-fired during the year; and 0.30 if the unit is not coal or natural gas-fired during the year. Section 101.506(f) provides that a unit's control period heat input, and a unit's status as coal-fired or natural gas-fired for a calendar year must be determined in accordance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75 to the extent the unit was otherwise subject to the requirements of part 75 for the year. Or, if a unit was not otherwise subject to part 75, the best available data reported to the TCEQ Executive Director can be used.

Under section 101.504(b), the TCEQ Executive Director will submit NO<sub>x</sub> allowances for units commencing operation on or after January 1, 2001 (referred to as new units), by October 31 of the applicable control period, beginning in 2009. Section 101.506(b)(1) specifies that for each control period in 2009-2014, allowances for new units are allocated from the 9.5 percent new unit set-aside. The new unit set aside allocation methodology is outlined in section 101.506(d). For the first control period in which a CAIR NO<sub>x</sub> unit commences commercial operation, such unit will not receive a NO<sub>x</sub> allocation from the new unit set-aside. The CAIR designated representative of a new unit must submit a written request for new unit allowances by July 1 of the first control period for which the allowance is requested and after the date that the unit commences commercial operation. The request for allowances from the new unit set aside cannot exceed the unit's total tons of NO<sub>x</sub> emissions as reported to EPA for the calendar year immediately preceding such control period. The TCEQ Executive Director will review all requests for allowances from the new unit set-aside and distribute allowances proportionally based on a unit's share of the total requested allowances. If allowances remain in the new unit set-aside after the TCEQ Executive Director has made allocations to the new units, the Executive Director will proportionally allocate the remaining allowances to existing units according to the provisions of section 101.506(e). Like the requirements for the existing units, the Texas allocation methodology at 101.506(f) requires that the part 75 monitoring, recordkeeping, and reporting requirements be used to determine a unit's total tons of NO<sub>x</sub> emissions during a calendar year to the extent the unit was otherwise subject to part 75. Or, if a unit was not otherwise subject to part 75, the best available data reported to the TCEQ Executive Director can be used.

#### E. Allocation of NO<sub>x</sub> Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO<sub>x</sub> annual emissions. The CSP consists of 200,000 CAIR NO<sub>x</sub> annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR; Texas's share of the CSP is 772 NO<sub>x</sub> allowances. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO<sub>x</sub> 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 and the Texas CAIR NO<sub>x</sub> Annual FIP's provisions allocate 772 NO<sub>x</sub> allowances to the Texas CSP (40 CFR 51.123 and 97.143) and establish specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the CAIR FIPs, Texas has chosen to modify the provisions of the Texas CAIR NO<sub>x</sub> Annual FIP concerning the allocation of allowances from the CSP. The Texas rules distribute CSP allowances using an allocation methodology that is substantively identical to the provisions in 40 CFR 96.143. The provisions for the allocation of CSP allowances in the Texas program are found at section 101.508 of 30 TAC Chapter 101. Section 101.508 authorizes the Texas Commission on Environmental Quality Executive Director to allocate for the control period in 2009 up to the amount CSP allowances designated for Texas in 40 CFR 96.143 (772 tons of NO<sub>x</sub>). The CSP allowances may be allocated, upon request by a CAIR unit's designated representative, to (1) A unit that has made early NO<sub>x</sub> emission reductions in 2007 and 2008, or (2) to a CAIR unit whose compliance during the 2009 control period would create an undue risk to the reliability of electricity supply during such control period. In each instance, the CAIR designated representative a CAIR unit must submit a written request for CSP allowances to the TCEQ Executive Director by July 1, 2009. The TCEQ Executive Director will determine allocations of the CSP and submit this information to EPA by November 30, 2009.

#### F. Individual Opt-In Units

The opt-in provisions of the CAIR and the States FIPs' provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading programs. 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 meet all

emissions through a stack and be able to meet monitoring, recordkeeping, and reporting 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 that CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the States' CAIR FIPs' trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the States' CAIR FIPs' opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-

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in provisions in the abbreviated SIP revision and thereby providing for its CAIR FIP's trading programs to be implemented in the State without the ability for units to opt into the programs.

Consistent with the flexibility given to States in the FIPs' provisions, Texas has chosen not to allow non-EGUs to participate in the Texas CAIR FIP NO<sub>x</sub> annual trading program. Texas is not subject to the CAIR NO<sub>x</sub> ozone season FIP so the opt-in provisions for the CAIR FIP NO<sub>x</sub> ozone season trading program are not applicable. We are not taking any action today on the Texas CAIR SO<sub>2</sub> SIP submittal.

## VI. Final Action

EPA is approving a revision to the Texas SIP, the Texas CAIR NO<sub>x</sub> Annual Abbreviated SIP revision, submitted on August 4, 2006, by the State of Texas (Texas regulations, 30 TAC, Chapter 101, Subchapter H, Division 7, sections 101.503, 101.504(a)(1), 101.504(b) 101.506(a)(1), 101.506(b)(1), and 101.506(c)-(f), and 101.508. Texas covered by the PM<sub>2.5</sub> CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO<sub>2</sub> and NO<sub>x</sub> annual emissions. Under this abbreviated SIP revision and consistent with the flexibility given to Texas in its CAIR NO<sub>x</sub> Annual FIP's provisions, the Texas provisions for allocating allowances under the Texas CAIR FIP's NO<sub>x</sub> annual

trading program for Phase 1 (2009-2014) of CAIR are approved as part of the Texas SIP. In addition, Texas provisions that establish a methodology for allocating NO<sub>x</sub> allowances in the CSP are

approved as part of the Texas SIP. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p)(1) and (2) with regard to NO<sub>x</sub> annual emissions and NO<sub>x</sub> CSP allocations.

EPA is not making any changes to the Texas CAIR NO<sub>x</sub> Annual

FIP's provisions, except to the extent that if EPA's direct final action on the Texas abbreviated SIP revision becomes effective, then EPA, by ministerial action, will note in Appendix A, 1 and 2, to Subpart EE of part 97, that Texas has an approved SIP revision for NO<sub>x</sub> annual allowance allocations for Phase 1 and for

NO<sub>x</sub> allowance allocations from the Texas CSP.

## VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, or the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). This action also does not have Federal implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and indicates that approval will result in ministerial changes to the appropriate appendices of the CAIR FIP's trading rules and does not alter the relationship or the distribution of power and responsibilities established in the Act. The EPA interprets Executive Order 13045, "Protection of Children from

Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it would approve a State program. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 97

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: July 16, 2007.

Richard E. Greene,  
Regional Administrator, EPA Region 6.

- 40 CFR parts 52 and 97 are 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 SS--Texas

- 2. Section 52.2270 is amended as follows:
- a. In paragraph (c) the table entitled ``EPA Approved Regulations in the Texas SIP'' is amended under Chapter 101--General Air Quality Rules, Subchapter H--Emissions Banking and Trading, by adding in numerical order a new entry for Division 7--Clean Air Interstate Rule

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- b. In paragraph (e) the table entitled ``EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding a new entry at the end for the Texas Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program Abbreviated SIP Revision.

Sec. 52.2270 Identification of plan.

\* \* \* \* \*  
 (c) \* \* \*

EPA Approved

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State citation

Title/subject

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 Chapter 101-  
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 Subchapter H--  
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 Division 7-  
 -----

Section 101.503..... Clean Air Interstate Rule  
 Oxides of Nitrogen Annual  
 Trading Budget.

Section 101.504..... Timing Requirements for Clean  
 Air Interstate Rule Oxides c  
 101.504(a)(2),  
 Nitrogen Allowance  
 Allocations.

Section 101.506..... Clean Air Interstate Rule  
 Oxides of Nitrogen Allowance  
 101.506(a)(2),  
 Allocations.

Section 101.508..... Compliance Supplement Pool...

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\* \* \* \* \*  
(e) \* \* \*

EPA Approved Nonregulatory Provisio

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Name of SIP provision	Applicable geographic or nonattainment area
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Texas Clean Air Interstate Rule Nitrogen Oxides Annual Trading Annual and CSP Program Abbreviated SIP Revision.	Statewide.....
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PART 97--[AMENDED]

• 3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, et s

• 4. Appendix A to Subpart EE is amended by adding an entry for ``Tex  
to paragraphs 1. and 2. to read as follows:

Appendix A to Subpart EE of Part 97--States With Approved State  
Implementation Plan Revisions Concerning Allocations

1. \* \* \*  
Texas (for control periods 2009-2014)
2. \* \* \*  
Texas

[FR Doc. E7-14485 Filed 7-27-07; 8:45 am]  
BILLING CODE 6560-50-P

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Notices For	2008	2007	2006	2005	2004	2003	2002	2001
		2000	1999	1998	1997	1996	1995	1994