

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 96, and 97

[EPA-HQ-OAR-2004-0076; FRL-8254-7]

RIN 2060-AM99

**Clean Air Interstate Rule (CAIR) and Federal Implementation
Plans for CAIR; Corrections**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments

SUMMARY: In this rule, EPA is making minor corrections to the Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans (FIPs) for the CAIR to clarify text that may potentially be misleading. This corrections rule does not change any of CAIR or CAIR FIPs rule requirements or substantively change the rules in any way.

EFFECTIVE DATE: These correcting amendments are effective on **[INSERT DATE OF PUBLICATION]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0076. Documents related to the CAIR are available in the rulemaking docket under Docket ID No. EPA-HQ-OAR-2003-0053; documents related to the CAIR FIPs are available in the rulemaking docket under Docket ID No. EPA-HQ-OAR-2004-0076. All documents in the dockets are listed on the www.regulations.gov web site.

Although listed in the indexes, some information is not publicly available, e.g., 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 www.regulations.gov or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., N.W., Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

NOTE: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's Federal Register notice at 71 FR 38147 (July 5, 2006) or the EPA website at www.epa.gov/epahome/dockets.htm for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-04, Research Triangle Park, NC 27711; telephone number (919) 541-3347, e-mail address: oldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR) in a final rule entitled, "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_x SIP Call" (70 FR 25162). On April 28, 2006, EPA published Federal Implementation Plans for the CAIR as part of a final rule entitled, "Rulemaking on Section 126 Petition From North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program" (71 FR 25328). The CAIR requires States to reduce emissions of nitrogen oxides and sulfur dioxide that contribute significantly to nonattainment and maintenance problems in downwind States with respect to the national ambient air quality standards for fine particulate matter

(PM_{2.5}) and 8-hour ozone. The CAIR FIPs ensure that the emissions reductions required by the CAIR are achieved on schedule. As the control strategy for the FIPs, EPA adopted the model cap-and-trade programs for power plants that EPA provided in the CAIR as a control option for States, with minor changes to account for Federal, rather than State, implementation. The EPA will withdraw the FIP for any State once that State's own State implementation plan for meeting the CAIR requirements is fully approved. For a detailed description of the CAIR and CAIR FIPs, please see the rulemaking actions which are available on EPA's website at www.epa.gov/cair and in the Federal Register at and 70 FR 25162; May 12, 2005 and 71 FR 25328; April 28, 2006.

II. Why are the Corrections Needed?

The CAIR and CAIR FIP contain minor errors that may prove to be misleading and are in need of clarification. As itemized in the regulatory text below, this corrections rule corrects typographical errors, makes minor word corrections, and corrects or provides more specificity in references to other paragraphs or sections within the regulatory text. It does not make any substantive changes to the CAIR or CAIR FIPs or change any of the rule requirements.

III. What is the Rulemaking Procedure?

The EPA is issuing this final rule without prior proposal or the opportunity for public comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the Agency may issue a rule without providing notice and an opportunity to comment. The EPA has determined that there is good cause for making this action final without prior proposal or opportunity to comment because the changes to the CAIR and CAIR FIPS correct minor, nonsubstantive errors, are noncontroversial, and are consistent with the technical basis for the rules. Thus, notice and public procedure are not necessary. The EPA finds this constitutes good cause under 5 U.S.C. 553(b)(B). (See also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), indicating that the good cause provisions of the APA continue to apply to rulemaking under section 307(d) of the CAA.)

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because this action corrects errors and helps to clarify requirements in the underlying rules, EPA finds good cause to make these corrections effective immediately.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (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. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Because EPA has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104B4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The corrections do not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

This action also does not significantly or uniquely affect the communities of Tribal governments, as specified in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The corrections also are not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

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

The corrections do not involve changes to technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to

Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 State. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on **[INSERT DATE OF PUBLICATION]**.

The EPA's compliance with the above statutes and Executive Orders for the underlying rules are discussed in Section X of the CAIR at 70 FR 25305 and in Section IX of the CAIR FIPs at 71 FR 25365.

List of Subjects

40 CFR Part 51

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

40 CFR Parts 96 and 97

Environmental protection. Administrative practice and procedure, Air pollution control, Electric utilities, intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 7, 2006.

Stephen L. Johnson,
Administrator.

For the reasons set forth in the preamble, parts 51, 96, and 97, of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401-7671q.

§ 51.123 [Amended]

2. Section 51.123 is amended as follows:

a. In paragraph (p)(1)(ii)(C)(2), by revising the words "in (97.143" to read "in § 97.143";

b. In paragraphs (q)(1)(iii)(B) and (q)(3), by revising the words "paragraph (e)(2)" to read "paragraph (q)(2)"; and

c. In paragraph (cc) in the definition of "Useful thermal energy", by revising in paragraph (2) the words "heat" to read "heating".

§ 51.124 [Amended]

3. Section 51.124 is amended, in paragraph (q) in the definition of "Useful thermal energy", by revising in paragraph (2) the words "heat" to read "heating".

4. The authority citation for part 96 continues to read as follows:

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

§ 96.102 [Amended]

5. Section 96.102 is amended as follows:

a. In the definition of "CAIR NO_x Annual Trading Program", by revising the words "§ 51.123" to read "§ 51.123(o)(1) or (2)";

b. In the definition of "CAIR NO_x Ozone Season Trading Program", by revising the words "§ 51.123" to read "§ 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd)"; and

c. In the definition of "CAIR SO₂ Trading Program", by revising the words "§ 51.124" to read "§ 51.124(o)(1) or (2)".

§ 96.105 [Amended]

6. Section 96.105 is amended, in paragraph (a)(1), by revising the words "(subparts BB and EE" to read "subparts BB and EE".

§ 96.115 [Amended]

7. Section 96.115 is amended, in paragraph (c) introductory text, by revising the words "Administrator that" to read "Administrator, that".

8. The heading for § 96.120 is amended to read as follows:

§ 96.120 General CAIR NO_x Annual Trading Program permit requirements.

* * * * *

§ 96.143 [Amended]

9. Section 96.143 is amended, in paragraph (c) introductory text and paragraph (c)(2) introductory text, by revising the words "CAIR NO_x emissions" to read "the CAIR NO_x emissions".

§ 96.151 [Amended]

10. Section 96.151 is amended, in paragraph (b)(2) introductory text and paragraph (b)(4) introductory text, by revising the words "representative or alternate" to read "representative and alternate".

§ 96.184 [Amended]

11. Section 96.184 is amended, in paragraph (c) introductory text, by revising the words "heat rate" to read "heat input".

§ 96.187 [Amended]

12. Section 96.187 is amended, in paragraph (b)(2)(ii), by revising the words "CAIR NO_x unit that" to read "CAIR NO_x opt-in unit that".

§ 96.202 [Amended]

13. Section 96.202 is amended as follows:

a. In the definition of "Alternate CAIR designated representative", by revising the words "source in accordance" to read "source, in accordance".

b. In the definition of "CAIR NO_x Annual Trading Program", by revising the words "§ 51.123" to read "§ 51.123(o)(1) or (2)";

c. In the definition of "CAIR NO_x Ozone Season Trading Program", by revising the words "§ 51.123" to read "§ 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd)";

d. In the definition of "CAIR SO₂ allowance" in paragraph (4), by revising the words "(Program, provisions" to read "Program, provisions".

e. In the definition of "CAIR SO₂ Trading Program", by revising the words "§ 51.124" to read "§ 51.124(o)(1) or (2)".

§ 96.206 [Amended]

14. Section 96.206 is amended, in paragraph (c)(4), by revising the words "subparts FFF and GGG" to read "subparts FFF, GGG, and III".

§ 96.215 [Amended]

15. Section 96.215 is amended, in paragraph (c) introductory text, by revising the words "Administrator that" to read "Administrator, that".

§ 96.251 [Amended]

16. Section 96.251 is amended, in paragraph (b)(2) introductory text and paragraph (b)(4) introductory text, by revising the words "representative or alternate" to read "representative and alternate".

§ 96.254 [Amended]

17. Section 96.254 is amended, in paragraph (e), by revising the words "of this section) and" to read "of this section and".

§ 96.271 [Amended]

18. Section 96.271 is amended, in paragraph (d)(2), by revising the words "include: Replacement" to read "include: replacement".

§ 96.284 [Amended]

19. Section 96.284 is amended, in paragraph (c) introductory text, by revising the words "heat rate" to read "heat input".

§ 96.287 [Amended]

20. Section 96.287 is amended, in paragraph (b)(2)(ii), by revising the words "CAIR SO₂ unit that" to read "CAIR SO₂ opt-in unit that".

§ 96.302 [Amended]

21. Section 96.302 is amended as follows:

a. In the definition of "Alternate CAIR designated representative", by revising the words "source in accordance" to read "source, in accordance".

b. In the definition of "CAIR NO_x Annual Trading Program", by revising the words "§ 51.123" to read "§ 51.123(o)(1) or (2)";

c. In the definition of "CAIR NO_x Ozone Season Trading Program", by revising the words "§ 51.123" to read "§ 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd)";

d. In the definition of "CAIR SO₂ Trading Program", by revising the words "§ 51.124" to read "§ 51.124(o)(1) or (2)".

e. In the definition of "Commence commercial operation" in paragraph (1)(i), by revising the word "97.304" to read "96.304".

§ 96.304 [Amended]

22. Section 96.304 is amended, in paragraph (a)(1), by revising the words "part: Any" to read "part: any".

§ 96.342 [Amended]

23. Section 96.342 is amended, in paragraph (c)(2), by revising the words "NO_x allowances" to read "NO_x Ozone Season allowances" and by revising the words "February 1 of" to read "February 1 before".

§ 96.351 [Amended]

24. Section 96.351 is amended, in paragraph (b)(2) introductory text and paragraph (b)(4) introductory text, by revising the words "representative or alternate" to read "representative and alternate".

§ 96.371 [Amended]

25. Section 96.371 is amended, in paragraph (d)(2), by revising the words "include: Replacement" to read "include: replacement".

§ 96.384 [Amended]

26. Section 96.384 is amended, in paragraph (c) introductory text, by revising the words "heat rate" to read "heat input".

§ 96.387 [Amended]

27. Section 96.387 is amended, in paragraph (b)(2)(ii), by revising the words "CAIR NO_x Ozone Season unit that" to read "CAIR NO_x Ozone Season opt-in unit that".

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

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

§ 97.102 [Amended]

29. Section 97.102 is amended as follows:

a. In the definition of "Alternate CAIR designated representative", by revising the words "source in accordance" to read "source, in accordance"; and

b. In the definition of "CAIR NO_x Ozone Season Trading Program", by revising the words "accordance with under subparts AAAA through IIII" to read "accordance with subparts AAAA through IIII of part 96".

§ 97.113 [Amended]

30. Section 97.113 is amended, in paragraph (a)(4)(iv), by revising the words "(Where there are" to read "Where there are".

§ 97.143 [Amended]

31. Section 97.143 is amended, in paragraph (c) introductory text and paragraph (c)(2) introductory text, by revising the words "CAIR NO_x emissions" to read "the CAIR NO_x emissions".

§ 97.144 [Amended]

32. Section 97.144 is amended, in paragraph (c)(2), by revising the words "State(s compliance" to read "State's compliance".

§ 97.184 [Amended]

33. Section 97.184 is amended, in paragraph (c) introductory text, by revising the words "heat rate" to read "heat input".

§ 97.187 [Amended]

34. Section 97.187 is amended, in paragraph (b)(2)(ii), by revising the words "CAIR NO_x unit that" to read "CAIR NO_x opt-in unit that".

§ 97.202 [Amended]

35. Section 97.202 is amended as follows:

a. In the definition of "Alternate CAIR designated representative", by revising the words "source in accordance" to read "source, in accordance";

b. In the definition of "CAIR NO_x Annual Trading Program", by revising the word " (§ 51.123(p))" to read "§ 51.123(p)"; and

c. In the definition of "CAIR NO_x Ozone Season Trading Program", by revising the word " (§ 51.123(ee))" to read "§ 51.123(ee)" and by revising the words "accordance with under subparts AAAA through IIII" to read "accordance with subparts AAAA through IIII of part 96".

§ 97.283 [Amended]

36. Section 97.283 is amended as follows:

a. In paragraph (a)(2)(iii), by revising the words "Is not, and" to read "Is not and,"; and

b. In paragraph (a)(2)(iv), by revising the words "stack, and" to read "stack; and".

§ 97.284 [Amended]

37. Section 97.284 is amended as follows:

a. In paragraph (c) introductory text, by revising the words "heat rate" to read "heat input";

b. In paragraph (c)(2), by revising the words "unit(s)" to read "unit's"; and

c. In paragraph (d)(2), by revising the words "and (b)(2)" to read "and (2)".

§ 97.287 [Amended]

38. Section 97.287 is amended, in paragraph (b)(2)(ii), by revising the words "CAIR SO₂ unit that" to read "CAIR SO₂ opt-in unit that".

§ 97.302 [Amended]

39. Section 97.302 is amended as follows:

a. In the definition of "Alternate CAIR designated representative", by revising the words "source in accordance" to read "source, in accordance";

b. In the definition of "CAIR NO_x Ozone Season Trading Program", by revising the words "accordance with under subparts AAAA through IIII" to read "accordance with subparts AAAA through IIII of part 96";

c. In the definition of "Reference method", by revising the words "(75.22" to read "§ 75.22"; and

d. In the definition of "State", by revising with words "(52.35" to read "§ 52.35".

§ 97.371 [Amended]

40. Section 97.371 is amended, in paragraph (d)(2), by revising the words "include: Replacement" to read "include: replacement".

§ 97.384 [Amended]

41. Section 97.384 is amended, in paragraph (c) introductory text, by revising the words "heat rate" to read "heat input".

§ 97.387 [Amended]

42. Section 97.387 is amended, in paragraph (b)(2)(ii), by revising the words "CAIR NO_x Ozone Season unit that" to read "CAIR NO_x Ozone Season opt-in unit that" and by revising the words "(97.304" to read "§ 97.304".