UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 7 2006

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Minor, Inadvertent Errors in Clean Air Interstate FIP/126 Rule, SAN 4956

TO: Stephen L. Johnson (1101A)
Administrator

FROM: William L. Wehrum (6101A)
Acting Assistant Administrator for Air and Radiation.

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Associate General Counsel
Air and Radiation Law Office

The Clean Air Interstate Rule Federal Implementation Plan/Section 126 (CAIR FIP/126) was signed on March 15, 2006. EPA staff have found minor, inadvertent errors in the rule text. One error is in part 51. The remaining errors are generally repeated in each of the SIP and FIP trading rules (these rules are virtually identically worded) in subparts II, III, and IIII of part 96 (SIP rules) and subparts II, III, and IIII of part 97 (FIP rules). The corrections necessary to correct these errors are listed below. With your approval by signature at the bottom of this memorandum, these corrections will be made in the version of the CAIR FIP/126 rule that will be published in the Federal Register.

Part 51.

1. For §51.123
   a. On page 244, revise paragraph a. by adding the words "and by removing the word 'and' at the end".

   b. On page 244, relabel existing paragraphs b, c, d, and e as paragraphs d, e, f, and g, respectively.

   c. On page 244, add a new paragraph b. that reads: "b. In paragraph (o)(2)(ii)(C), by revising the words 'allocated.' to read 'allocated; and';".

   d. On page 244, add a new paragraph c. that reads: "c. By adding a new paragraph (o)(2)(ii)(D);".

e. On page 245, add to the rule text a new paragraph (o)(2)(ii)(D) that reads:
"(o) * * *
(2) * * *
(ii) * * *
(D) The State's methodology for allocating the compliance supplement pool must be substantively identical to § 97.143 (except that the permitting authority makes the allocations and the Administrator records the allocations made by the permitting authority) or otherwise in accordance with paragraph (e)(4) of this section."

These changes correct the rule text so that it is consistent with statements in the CAIR FIP/126 preamble (at pages 98-99) that States have the same options for full SIPs and abbreviated SIPs concerning the methodology they may choose to distribute the compliance supplement pool. This correction aligns the rule text and the CAIR FIP/126 preamble.

Part 96.

1. For §96.187 and §96.387,

a. On page 324, revise existing paragraph c. to remove the word "and" after the semicolon.

b. On page 324, relabel existing paragraph d. as paragraph e. and revise this paragraph by revising the words "paragraphs (b)(3)(ii) and (b)(3)(ii)(A)" to read "paragraph (b)(3)(ii)(A)".

c. On page 324, add a new paragraph d. that reads: "d. In paragraph (b)(3)(ii), by revising the words 'Notwithstanding paragraph (b)(3)(i) of this section, if' to read 'If',", by revising the words 'January 1' to read 'December 31', and by revising the words 'number of CAIR NO_x allowances' to read 'amount of CAIR NO_x allowances'; and".

d. On page 383, revise existing paragraph c. to remove the word "and" after the semicolon.

e. On page 383, relabel existing paragraph d. as paragraph e. and revise this paragraph by revising the words "paragraphs (b)(3)(ii) and (b)(3)(ii)(A)" to read "paragraph (b)(3)(ii)(A)".

f. On page 383, add a new paragraph d. that reads: "d. In paragraph (b)(3)(ii), by revising the words 'Notwithstanding paragraph (b)(3)(i) of this section, if' to read 'If', by revising the words 'May 1' to read 'September 30', and by revising the words 'number of CAIR NO_x Ozone Season allowances' to read 'amount of CAIR NO_x Ozone Season allowances'; and".

These changes remove extraneous and confusing rule text language and align the dates in paragraphs (b)(2)(i)(B) and (3)(ii).

2. For §96.188 , §96.288, and §96.388,

a. On pages 325, 352, and 384, revise paragraph a. by deleting the word "and" after the semicolon.

b. On page 325, relabel existing paragraph b. as paragraph d., and revise this paragraph by revising the words "paragraphs (a)(2) and (d)(2)" to read "paragraph (d)(2)", by deleting the period at the end, and by adding at the end the words "and revising to read as follows:".

c. On page 352, relabel existing paragraph b. as paragraph d., and delete the words "(a)(2) and".

d. On page 384, relabel existing paragraph b. as paragraph d., and revise this paragraph by revising the words "paragraphs (a)(2) and (d)(2)" to read "paragraph (d)(2)" and by deleting the words "whenever they appear".

e. On page 325, add a new paragraph b. that reads: "b. In paragraph (a)(2), by revising the words 'of the control period in which a CAIR opt-in unit' to read 'of the control period after the control period in which a CAIR NO_x opt-in unit';.

f. On page 352, add a new paragraph b. that reads: "b. In paragraph (a)(2), by revising the words 'of the control period in which a CAIR opt-in unit' to read 'of the control period after the control period in which a CAIR SO_2 opt-in unit';".

g. On page 384, add a new paragraph b. that reads: "b. In paragraph (a)(2), by revising the words 'of the control period in which' to read 'of the control period after the control period in which', by revising the words 'CAIR opt-in unit' to read 'CAIR NO_x Ozone Season opt-in unit', and by revising the words 'CAIR NO_x opt-in unit' to read 'CAIR NO_x Ozone Season opt-in unit';".

These changes correct the error of having paragraphs (a)(1) and (a)(2) of the rule text impose inconsistent requirements concerning the same control period. Paragraph (a)(1) refers to the first control period in which an opt-in unit enters the trading program, and paragraph (a)(2) is supposed to refer to the second control period when the unit is in the trading program.

h. On page 325, add a new paragraph c. that reads: "c. In paragraph (c), by revising the words 'issues a CAIR opt-in permit' to read 'issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.183(a)(5))'; and".

i. On page 352, add a new paragraph c. that reads: "c. In paragraph (c), by revising the words 'issues a CAIR opt-in permit' to read 'issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.283(a)(5))'; and".

j. On page 384, add a new paragraph c. that reads: "c. In paragraph (c), by revising the words 'issues a CAIR opt-in permit' to read 'issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.383(a)(5))'; and".

These changes make it clear that the demonstration of intent in the opt-in permit application already referenced in §§96.183(a)(5), 96.283(a)(5), and 96.383(a)(5) is to be considered in issuing the opt-in permit.

Part 97.

1. For §97.187 and §97.387,

   a. On page 512, in paragraph (b)(3)(ii), revise the words "Notwithstanding paragraph (b)(3)(i) of this section, if" to read "If" and revise the words "January 1" to read "December 31".

   b. On page 761, in paragraph (b)(3)(ii), revise the words "Notwithstanding paragraph (b)(3)(i) of this section, if" to read "If" and revise the words "May 1" to read "September 30".

These changes remove extraneous and confusing rule text language and align the dates in paragraphs (b)(2)(i)(B) and (3)(ii); this is the same change that is made in paragraph 1 above for Part 96.

2. For §97.188 , §97.288 , and §97.388,

   a. On pages 513, 627, and 762, in paragraph (a)(2), revise the words "of the control period in which" to read "of the control period after the control period in which".

These changes correct the error of having paragraphs (a) (1) and (a)(2) of the rule text impose inconsistent requirements concerning the same control period. Paragraph (a) (1) refers to the first control period in which an opt-in unit enters the trading program, and paragraph (a)(2) is supposed to refer to the second control period when the unit is in the trading program. This is the same change that is made in paragraph 2 above for Part 96.

   b. On page 514, in paragraph (c), revise the words "issues a CAIR opt-in permit" to read "issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §97.183(a)(5))".

   c. On page 629, in paragraph (c), revise the words "issues a CAIR opt-in permit" to read "issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §97.283(a)(5))".

   d. On page 764, in paragraph (c), revise the words "issues a CAIR opt-in permit" to read "issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §97.383(a)(5))".

These changes make it clear that the demonstration of intent in the opt-in permit application already referenced in §§97.183(a)(5), 97.283(a)(5), and 97.383(a)(5) is to be considered in issuing the opt-in permit.

We recommend that you correct these inadvertent errors and approve these changes by signing and dating below.

Stephen L. Johnson
Administrator

APR 10 2006
Date