

Clean Air Interstate Rule - Repeal
Executive Summary
25 Pa. Code Chapters 121, 129 and 145

This final rulemaking repeals the Clean Air Interstate Rule (CAIR) regulations adopted under the authority of 35 P.S. §4005 (relating to Environmental Quality Board). This is accomplished by use of the “final-omitted” rulemaking process authorized under 45 P.S. §1204 (relating to omission of notice of proposed rulemaking). Omission of notice of proposed rulemaking is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Document Law (45 P.S. §§1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. The EPA’s CAIR regulations adopted and incorporated by reference on April 12, 2008 as the core of the Pennsylvania CAIR regulation have been vacated by Federal court order. This necessitates prompt repeal by the end of this year in order to avoid lost emission reductions, undue confusion, and conflict with the Federal court decision and the Commonwealth’s Federally-approved state implementation plan (SIP). The Department will continue to implement the Commonwealth’s Federally-approved nitrogen oxides (NOx) SIP call (NOx SIP Call) regulations instead of CAIR.

The U.S. Environmental Protection Agency (EPA) adopted the CAIR in 2005. CAIR included model rules for a 28-state and District of Columbia emission trading program to reduce the interstate transport of NOx and sulfur dioxide. Following CAIR’s adoption, numerous petitions for review were filed in the Court of Appeals for the District of Columbia Circuit, though the Department did not file a petition. The Department adopted a Pennsylvania CAIR on April 12, 2008, incorporating by reference the Federal CAIR model rules and making related regulatory amendments. On July 11, 2008, the court ruled that CAIR was “fundamentally flawed,” and vacated the regulation. The court stated that the NOx SIP Call continues in CAIR’s absence. The NOx SIP Call is in the Commonwealth’s approved SIP.

This final-omitted rulemaking is necessary to repeal the CAIR provisions and to ensure continuity in implementing the NOx SIP Call regulations. The rulemaking will continue the NOx SIP Call emission allowances the April 12, 2008 rulemaking terminated beginning January 1, 2009. The rulemaking will repeal the transition provisions, including those applicable to non-EGUs. The rulemaking will reinstate requirements for small sources of NOx (certain boilers, stationary combustion turbines and stationary internal combustion engines) in the five-county Philadelphia area, and for Portland cement kilns and large stationary internal combustion engines, to surrender NOx Budget Trading Program allowances instead of CAIR allowances. The rulemaking will allow air pollution reduction to continue in accordance with the court ruling and the Commonwealth’s approved SIP.