(e) * * *

NEW HAMPSHIRE NONREGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
* *	* *	*	* *	*
Amendment to New Hampshire 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).	Statewide	6/16/2017	12/17/2018 [Insert **Federal Register** citation]	

[FR Doc. 2018–27171 Filed 12–14–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0700; FRL–9987–75–Region 5]

Air Plan Approval; Indiana; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state submittal concerning the Cross-State Air Pollution Rule (CSAPR) that was submitted by Indiana on November 27, 2017 as a revision to the Indiana state implementation plan (SIP). Under CSAPR, large electricity generating units (EGUs) in Indiana are currently subject to Federal implementation plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_X), one of CSAPR's two Federal trading programs for annual emissions of sulfur dioxide (SO_2), and one of CSAPR's two Federal trading programs for ozone season emissions of NO_X. This action approves the State's regulations requiring large Indiana EGUs to participate in new CSAPR state trading programs for annual NO_X, annual SO_2, and ozone season NO_X emissions integrated with the CSAPR Federal trading programs, replacing the corresponding FIP requirements. EPA is approving the State's submission because it meets the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of the SIP revision automatically eliminates Indiana's units' requirements under the corresponding CSAPR FIPs addressing Indiana's interstate transport (or ''good neighbor'') obligations with respect to the 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS), the 2006 $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. Like the CSAPR FIP requirements that are being replaced, approval of the SIP revision fully satisfies Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS and partially satisfies Indiana's good neighbor obligation with respect to attainment and maintenance of the 2008 ozone NAAQS. EPA proposed approval of the State's submission on August 14, 2018.

DATES: This final rule is effective on December 17, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0700. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, 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 through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Overview
II. Background on CSAPR and CSAPR-Related SIP Revisions
III. Indiana's SIP Submittal and EPA's Analysis
IV. Final Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Overview

EPA is approving a November 27, 2017 submittal as a revision to the Indiana SIP to include CSAPR state trading programs for annual emissions of NO_X and SO_2 and ozone season emissions of NO_X. Large EGUs in Indiana are subject to CSAPR FIPs that require the units to participate in the Federal CSAPR NO_X Annual Trading Program, the Federal CSAPR SO_2 Group 1 Trading Program, and the Federal CSAPR NO_X Ozone Season Group 2 Trading Program. CSAPR provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR Federal trading programs.

The submission incorporates into Indiana's SIP state trading program regulations for annual NO_X, annual SO_2, and ozone season NO_X emissions that replace EPA's Federal trading program regulations for these emissions from

Indiana units. EPA is approving the submission as a SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a Federal trading program with a state trading program that is integrated with and substantively identical to the Federal trading program. Under the CSAPR regulations, approval of the submission as a SIP revision automatically eliminates the obligations of large EGUs in Indiana to participate in CSAPR's Federal trading programs for annual NO_X, annual SO_2, and ozone season NO_X emissions under the corresponding CSAPR FIPs. EPA finds that approval of the SIP revision fully satisfies Indiana's obligations pursuant to the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS in any other state and partially satisfies Indiana's corresponding obligation with respect to the 2008 ozone NAAQS.

Approval of the submission as a SIP revision also removes from Indiana's SIP most of the State's rules implementing the discontinued Clean Air Interstate Rule (CAIR) trading programs, including all of the State's rules for the annual NO_X and annual SO_2 trading programs and portions of the State's rule for the ozone season NO_X trading program. The discontinued CAIR state trading programs established under these rules have been replaced by CSAPR trading programs for the affected EGUs.

II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR [1] in 2011 and the CSAPR Update [2] in 2016 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including by the CSAPR Update), CSAPR requires 27 eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide ''budgets'' for emissions of annual SO_2, annual NO_X, and/or ozone season NO_X by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency: The Phase 1 budgets apply to emissions in 2015 and 2016; and the Phase 2 and CSAPR Update budgets apply to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five Federal emissions trading programs: A program for annual NO_X emissions; two geographically separate programs for annual SO_2 emissions; and two geographically separate programs for ozone season NO_X emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state.[3] Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's Federal emissions trading programs or state emissions trading programs integrated with the Federal programs, provided that the SIP revisions meet all relevant criteria.[4] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's Federal trading programs for ozone season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.[5] If a state wants to replace the CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the Federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR Federal trading programs may submit SIP revisions to modify or replace the FIP requirements with respect to some or all of those trading programs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[6] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations. Under the first alternative—an ''abbreviated'' SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR Federal trading program for the state.[7] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units.

Under the second alternative—a ''full'' SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR Federal trading program for the state with a state trading program integrated with the Federal trading program, so long as the state trading program is substantively identical to the Federal trading program or does not substantively differ from the Federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[8] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the Federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97).

[2] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[3] States are required to submit good neighbor SIPs three years after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c).

[4] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[5] States covered by both the CSAPR Update and the NO_X SIP Call have the additional option to expand applicability under the CSAPR NO_X Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the NO_X Budget Trading Program.

[6] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 for CSAPR NO_X Ozone Season Group 2 units) and is not relevant here. *See* § 52.38(a)(3), (b)(3), (b)(7); § 52.39(d), (g).

[7] 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

[8] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

SIP that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP revision as meeting the requirements of the CSAPR regulations is full and unconditional.[9] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR Federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[10] Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the Federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[11]

In the CSAPR rulemaking, EPA determined that air pollution transported from Indiana would unlawfully affect other states' ability to attain or maintain the 1997 $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS and therefore included the State's EGUs in the CSAPR Federal trading programs for SO_2 and annual NO_X (to address the State's obligations regarding transported $PM_{2.5}$ pollution) and the original CSAPR Federal trading program for ozone season NO_X (to address the State's obligations regarding transported ozone pollution).[12] In the CSAPR Update rulemaking, EPA determined that air pollution transported from Indiana would unlawfully affect other states' ability to attain or maintain the 2008 ozone NAAQS, established a more stringent ozone season NO_X budget for the State's EGUs, and coordinated requirements by allowing compliance with the new budget to address the State's obligations regarding transported pollution with respect to both the 1997 ozone NAAQS and the 2008 ozone NAAQS.[13] Indiana's EGUs meeting the CSAPR applicability criteria are consequently subject to CSAPR FIP requirements to participate in the CSAPR SO_2 Group 1 Trading Program, the CSAPR NO_X Annual Trading Program, and the CSAPR NO_X Ozone Season Group 2 Trading Program.[14] In the original CSAPR rulemaking, EPA found that the EGUs' participation in the SO_2 and annual NO_X Federal trading programs fully addresses Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS.[15] In the CSAPR Update rulemaking, EPA found that the EGUs' participation in the ozone season NO_X Federal trading program fully addresses Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 ozone NAAQS and partially, but not necessarily fully, addresses the State's good neighbor obligation with respect to attainment and maintenance of the 2008 ozone NAAQS.[16]

III. Indiana's SIP Submittal and EPA's Analysis

On November 27, 2017, Indiana submitted to EPA provisions that, if approved, would incorporate into Indiana's SIP state trading program regulations for Indiana's EGUs that would replace the CSAPR Federal trading program regulations with regard to the units' SO_2, annual NO_X, and ozone season NO_X emissions. The SIP submittal consists of Indiana Rules 326 IAC 24–5, 326 IAC 24–6, and 326 IAC 24–7. In general, each of Indiana's CSAPR state trading program rules are designed to replace the corresponding Federal trading program regulations. For example, Indiana Rule 326 IAC 24–5 (Nitrogen Oxides (NO_X) Annual Trading Program) is designed to replace subpart AAAAA of 40 CFR part 97 (*i.e.,* 40 CFR 97.401 through 97.435). In a letter to EPA dated June 11, 2018, Indiana clarified its interpretation of certain provisions in its three rules, including identification of some minor textual errors that it may correct in subsequent amendments.

Indiana also requests in its submission the removal from the SIP of the State's rules for the CAIR state trading programs for annual NO_X and SO_2 at 326 IAC 24–1 and 24–2, respectively, and sections 3, 5 through 10, and 12 of the State's rule at 326 IAC 24–3 for the CAIR state trading program for ozone season NO_X.[17]

In a notice of proposed rulemaking published on August 14, 2018 (83 FR 40184), EPA proposed to approve Indiana's November 27, 2017 SIP submittal (as clarified in the State's June 11, 2018 letter) designed to replace the CSAPR Federal trading programs. EPA noted that approval of the SIP revision would automatically eliminate Indiana's EGUs' requirements under the CSAPR FIPs and would fully satisfy Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS and would partially satisfy Indiana's good neighbor obligations with respect to attainment and maintenance of the 2008 ozone NAAQS. EPA also proposed to approve the requested removal of the identified portions of the State's CAIR rules, noting that the CAIR trading programs have been replaced by CSAPR trading programs for affected EGUs. The proposed rulemaking provides additional detail regarding the background and rationale for EPA's action.

Comments on the proposal were due on or before September 13, 2018. EPA received four sets of comments, only one of which substantively addressed the contents of the proposal; EPA's response is below.

The State of Maryland submitted a comment on a matter that is separate from this action. It is related to EPA's June 29, 2018 proposed determination that compliance with the ozone season NO_X budgets established in the CSAPR Update represents a full rather than partial remedy for the good neighbor obligations of 20 states, including Indiana, with respect to attainment and maintenance of the 2008 ozone NAAQS.[18] In the proposal for this action, EPA stated that if the June 29, 2018 proposed determination is finalized as proposed, then approval of Indiana's CSAPR SIP revision would fully address the State's good neighbor obligation with respect to attainment and maintenance of the 2008 ozone NAAQS.[19] The State of Maryland

[9] 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

[10] 40 CFR 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(9)(vi)–(vii), (b)(10)(i); 52.39(f)(4)–(5), (i)(4)–(5), (j).

[11] 40 CFR 52.38(a)(7), (b)(11); 52.39(k).

[12] 76 FR at 48210, 48213.

[13] 81 FR at 74506, 74563 n.169.

[14] 40 CFR 52.38(a)(2)(i), (b)(2)(ii); 52.39(b); *see also* 40 CFR 52.789(a)(1), (b)(2); 40 CFR 52.790(a).

[15] 76 FR at 48210.

[16] 81 FR at 74506–08.

[17] In the SIP submittal, Indiana also requested approval of a revision to 326 IAC 26–1–5 replacing reliance on CAIR in the State's Regional Haze program with reliance on CSAPR. EPA will act on this request in a separate rulemaking.

[18] Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard, 83 FR 31915 (July 10, 2018).

[19] 83 FR at 40185 n.2, 40191 n.33.

disagreed with these statements.[20] The comments are outside the scope of this action because EPA has not finalized the June 29, 2018 proposed determination.[21]

IV. Final Action

EPA is approving Indiana's November 27, 2017, SIP submittal (as clarified in Indiana's June 11, 2018 letter) concerning the establishment for Indiana units of CSAPR state trading programs for SO_2, annual NO_X, and ozone season NO_X emissions. The revision adopts into the SIP the State trading program rules codified at 326 IAC 24–5 (Nitrogen Oxides (NO_X) Annual Trading Program), 326 IAC 24–6 (Nitrogen Oxides (NO_X) Ozone Season Group 2 Trading Program), and 326 IAC 24–7 (Sulfur Dioxide (SO_2) Group 1 Trading Program).

These Indiana CSAPR state trading programs will be integrated with the Federal CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, and CSAPR SO_2 Group 1 Trading Program, respectively, and are substantively identical to the Federal trading programs except with regard to the allowance allocation provisions. Following approval of these portions of the SIP revision, Indiana units therefore will generally be required to meet requirements under Indiana's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR Federal trading programs, but allocations to Indiana units of CSAPR NO_X Annual, CSAPR NO_X Ozone Season Group 2, and CSAPR SO_2 Group 1 allowances for control periods in 2021 and later years will be determined according to the SIP's allocation provisions in Indiana's rules instead of the default allocation provisions under the Federal trading program regulations. EPA is approving the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a Federal trading program with a state trading program that is integrated with and substantively identical to the Federal trading program except for permissible differences with respect to emission allowance allocation provisions.

Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for particular CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).[22] EPA promulgated the FIP provisions requiring Indiana units to participate in the Federal CSAPR SO_2 Group 1, CSAPR NO_X Annual, and CSAPR NO_X Ozone Season Group 2 trading programs in order to address a lack of provisions in Indiana's SIP addressing the State's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. As noted in section II of this action, EPA has previously found that the CSAPR FIP requirements represent a full remedy for Indiana's obligations with respect to the first three of these NAAQS and a partial, but not necessarily full, remedy for the State's obligations with respect to the 2008 ozone NAAQS. Approval of the portions of Indiana's SIP submittal adopting CSAPR state trading program rules substantively identical to the corresponding CSAPR Federal trading program regulations (or differing only with respect to the allowance allocation methodology) similarly satisfies Indiana's obligations pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS in any other state, and partially satisfies Indiana's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. Thus, the approval corrects the same deficiencies in the SIP that otherwise would be corrected by the CSAPR FIP requirements. Due to this, EPA is fully approving Indiana's infrastructure SIP obligation under CAA section 110(a)(2)(D)(i)(I) for the 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, and 1997 ozone NAAQS (prongs 1 and 2) and is issuing a limited approval on this infrastructure element for the 2008 ozone NAAQS in today's action.

The approval of the portions of Indiana's SIP submittal establishing CSAPR state trading program rules therefore also results in the automatic termination of the obligations of Indiana units to participate in the Federal CSAPR SO_2 Group 1, CSAPR NO_X Annual, and CSAPR NO_X Ozone Season Group 2 trading programs.

EPA is also approving the removal from Indiana's SIP of the State's CAIR rules codified at 326 IAC 24–1 (Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program) and 326 IAC 24–2 (Clean Air Interstate Rule Sulfur Dioxide Trading Program) and sections 3, 5 through 10, and 12 of the State's CAIR rule codified at 326 IAC 24–3 (Clean Air Interstate Rule NO_X Ozone Season Trading Program). The discontinued CAIR state trading programs established under the rule provisions being removed have been replaced by CSAPR trading programs for the affected EGUs.

This final rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), which generally provides that final rules may not take effect earlier than 30 days after publication in the **Federal Register** but allows exceptions where an agency finds good cause and publishes its finding with the rule, applies to this action. Ordinarily, a 30-day transition period before a new rule takes effect would give affected parties an opportunity to adjust their behavior and prepare for compliance. However, in this instance no transition period is necessary because this rule does not impose new requirements. Under CSAPR's existing requirements, on March 1 of each year affected sources must hold quantities of emissions allowances not less than their emissions during the prior year's control period. The CSAPR regulations provide for default allocations to affected sources of allowances eligible for use in meeting this requirement. In this rule, in accordance with options CSAPR makes available to states, EPA is approving into Indiana's SIP the State's rules which include allocation provisions to replace the default federally-established allocations for control periods in 2021 and later years. The sooner this rule is effective, the sooner allowances eligible for use for the 2021 control period can be issued to affected sources in Indiana in the amounts determined under Indiana's rules, which will assist the sources in planning to meet their March 1, 2022, compliance requirement. EPA therefore finds good cause to make this

[20] Comments of Maryland Dept. of the Environment (September 13, 2018), EPA–R05–OAR–2017–0700–0008.

[21] Maryland's comments also cite a State submittal from Indiana dated March 29, 2018 that seeks to fully address the State's good neighbor obligations with respect to attainment and maintenance of the 2008 ozone NAAQS, relying in part on the CSAPR state trading program rules that are being approved into the SIP in this final action. Although the State's March 2018 submittal has been made available in the docket for this action (EPA–R05–OAR–2017–0700–0003), EPA is not acting on the March 2018 submittal at this time and is not relying on information in that submittal to support this final action.

[22] 40 CFR 52.38(a)(6), (b)(10); 40 CFR 52.39(j); *see also* 40 CFR 52.789(a)(1), (b)(2); 40 CFR 52.790(a).

final rule effective immediately upon publication in the **Federal Register**.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Administrative Code provisions 326 IAC 24–5, 326 IAC 24–6, and 326 IAC 24–7, effective on November 24, 2017. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[23]

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 CAA; 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2019. 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 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 27, 2018.

James O. Payne,

Acting Regional Administrator, Region 5.

Part 52 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

§ 52.38 [Amended]

■ 2. Section 52.38 is amended:
■ a. In paragraph (a)(8)(iii), by adding after the text ''Georgia,'' the text ''Indiana,''; and
■ b. In paragraph (b)(13)(iv), by removing the text ''Alabama.'' and adding in its place the text ''Alabama and Indiana.''.

§ 52.39 [Amended]

■ 3. Section 52.39(l)(3) is amended by removing the text ''[none].'' and adding in its place the text ''Indiana.''.

Subpart P—Indiana

■ 4. Section 52.770 is amended:
■ a. In the table in paragraph (c) by revising the section ''Article 24. Trading Programs: Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2)''; and
■ b. In the table in paragraph (e) by revising the entries for ''Section 110(a)(2) infrastructure requirements for the 1997 8-Hour Ozone NAAQS'', ''Section 110(a)(2) infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS'', ''Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS'', and ''Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS''.

The revisions read as follows:

§ 52.770 Identification of plan.

* * * * *

[23] 62 FR 27968 (May 22, 1997).

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 24. Trading Programs: Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2)				
Rule 3. Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program				
24–3–1	Applicability	2/25/2007	11/29/2010, 75 FR 72956	
24–3–2	Definitions	6/11/2009	11/29/2010, 75 FR 72956	
24–3–4	Standard requirements	2/25/2007	11/29/2010, 75 FR 72956	
24–3–11	Monitoring and reporting requirements	2/25/2007	11/29/2010, 75 FR 72956	
Rule 5. Nitrogen Oxides (NO_X) Annual Trading Program				
24–5–1	Applicability and incorporation by reference	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–2	CSAPR NO_X annual trading budget	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–3	CSAPR NO_X annual allocation timing	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–4	Baseline heat input and historic emissions	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–5	Existing unit allocations and adjustments	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–6	New unit allocations	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–7	Unallocated new unit set-aside allowances	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
Rule 6. Nitrogen Oxides (NO_X) Ozone Season Group 2 Trading Program				
24–6–1	Applicability and incorporation by reference	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–2	CSAPR NO_X ozone season group 2 trading budget	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–3	CSAPR NO_X ozone season group 2 allocation timing	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–4	Baseline heat input and historic emissions	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–5	Existing unit allocations and adjustments	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–6	New unit allocations	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–7	Unallocated new unit set-aside allowances	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
Rule 7. Sulfur Dioxide (SO_2) Group 1 Trading Program				
24–7–1	Applicability and incorporation by reference	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–2	CSAPRSO_2 group 1 trading budget	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–3	CSAPR SO_2 group 1 allocation timing	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–4	Baseline heat input and historic emissions	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–5	Existing unit allocations and adjustments	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–6	New unit allocations	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–7	Unallocated new unit set-aside allowances	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	* *	*	* *
Section 110(a)(2) infrastructure requirements for the 1997 8-Hour Ozone NAAQS.	12/7/2007, 9/19/2008, 3/23/2011, 4/7/2011, and 11/24/2017.	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II).
Section 110(a)(2) infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS.	12/7/2007, 9/19/2008, 3/23/2011, 4/7/2011, and 11/24/2017.	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS.	10/20/2009, 6/25/2012, 7/12/2012, 5/22/2013, and 11/24/2017.	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	12/12/2011 and 11/24/2017	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II) and a limited approval for 110(a)(2)(D)(i)(I).
* *	* *	*	* *

[FR Doc. 2018–26920 Filed 12–14–18; 8:45 am]
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FEDERAL MARITIME COMMISSION

46 CFR Part 545

[Docket No. 18–06]

RIN 3072–AC71

Interpretive Rule, Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is revising its interpretation of the scope of the Shipping Act prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. Specifically, the Commission is clarifying that the proper scope of that prohibition in the Shipping Act of 1984 and the conduct covered by it is guided by the Commission's interpretation and precedent articulated in several earlier Commission cases, which require that a regulated entity engage in a practice or regulation on a *normal, customary,* and *continuous* basis and that such practice or regulation is unjust or unreasonable in order to violate that section of the Shipping Act.

DATES: This final rule is effective December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Through this interpretive rule, the Federal Maritime Commission is clarifying its interpretation of the scope of 46 U.S.C. 41102(c) (section 10(d)(1) of the Shipping Act of 1984).[1] Section 41102(c) provides that regulated entities ''may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' This interpretive rule clarifies that in order to violate § 41102(c), a regulated entity must engage in an unjust or unreasonable practice or regulation on a *normal, customary,* and *continuous* basis.

II. NPRM and Summary of Comments

On September 7, 2018, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on its proposed interpretation.[2] Five comments were received in response to the NPRM, which may be found at the Electronic Reading Room on the Commission's website at *https://www.fmc.gov/18-06/.* Comments were received from the American Association of Port Authorities (AAPA), New York New Jersey Foreign Freight Forwarders and Brokers Association (NYNJFFF&BA), World Shipping Council (WSC), International Trade Surety Association (ITSA) and National Customs Brokers and Forwarders Association of America (NCBFAA). All five comments received by the Commission were in support of the rulemaking.

In their submission, AAPA affirms that the rule would bring the Commission's interpretation of the Shipping Act's prohibition on unjust and unreasonable practices and regulations in line with the plain language meaning of the word ''practice,'' Commission precedent and the intent of Congress. AAPA does not believe that the rule would leave potential claimants without remedies, but that the rule would stop individual instances better suited for resolution under the Carriage of Goods by Sea Act (COGSA) or other venue from being brought to the Commission.

NYNJFFF&BA also agrees that the intent of Congress and the plain language reading of § 41102(c) support this rulemaking. NYNJFFF&BA believes that without this rule, ocean transportation intermediaries (OTIs) are at risk of violating the Shipping Act over a single disagreement or accidental misstep, and this risk hinders resolutions through settlement. NYNJFFF&BA argues that this rule would limit the risk of frivolous claims being brought and allow OTIs to operate and settle claims more fairly and cost effectively. NYNJFFF&BA contends that claims that cannot be settled can still be brought through other venues.[3]

In its comment, WSC notes that from 1935 to 2001, the Commission precedent was in line with the

[1] Some authorities cited herein refer to § 41102(c) while others refer to section 10(d)(1). For ease of reading, we will generally refer to § 41102(c) in analyzing these authorities.

[2] NPRM: Interpretive Rule, Shipping Act of 1984, 83 FR 45367 (Sept. 7, 2018).

[3] In addition to its comments on the current interpretive rule, NYNJFFF&BA also encourages the Commission to review other prohibitions in § 41102 as part of future interpretive rulemakings, alleging that its members have been subject to penalties for technical violations involving no injured parties and that these investigations do not serve the purposes of the Shipping Act of 1984. As NYNJFFF&BA notes, these issues are outside the scope of this rulemaking, but the Commission will consider these comments in determining whether to initiate future rulemakings.