appropriate action to collect the amount of the advance payment from the beneficiary.

If an advance payment was not made to the beneficiary and the beneficiary does not submit a final payment request in accordance with paragraph (b) of this section within 60 days of the date the application was approved, the application will be closed and no future HISA benefits will be furnished to the beneficiary for that application. Before closing the application, VA will send a notice to the beneficiary of the intent to close the file. If the beneficiary does not respond with a suitable update and explanation for the delay within 30 days, VA will close the file and provide a final notice of closure. The notice will include information about the right to appeal the decision.

(e) Failure to make approved improvements or structural alterations. If an inspection conducted pursuant to paragraph (c)(1) of this section reveals that the improvement or structural alteration has not been completed as indicated in the final payment request, VA may take appropriate action to collect the amount of the advance payment from the beneficiary. VA will not seek to collect the amount of the advance payment from the beneficiary if the beneficiary provides documentation indicating that the project was not completed due to the fault of the contractor, including bankruptcy or misconduct of the contractor.

(Authority: 38 U.S.C. 501, 1717)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0188.)

[FR Doc. 2014–28373 Filed 12–2–14; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 97

RIN 2060–AS40

Rulemaking To Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is amending the Code of

Federal Regulations (CFR) to correctly reflect the compliance deadlines for the Cross-State Air Pollution Rule (CSAPR) as revised by the effect of the action of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) granting the EPA’s motion to lift the previous stay of CSAPR and delay (toll) its deadlines by three years. With these ministerial amendments, the CFR text will correctly indicate that CSAPR’s Phase 1 emissions budgets apply in 2015 and 2016 and that CSAPR’s Phase 2 emissions budgets and assurance provisions apply in 2017 and beyond. The ministerial amendments similarly correct dates in the CFR text related to specific activities required or permitted under CSAPR by regulated sources, the EPA, and states, as well as dates related to the sunsetting of the Clean Air Interstate Rule (CAIR) upon its replacement by CSAPR. The amendments are necessary to clarify the timing of requirements and elections under CSAPR as shown in the CFR text so that compliance can begin in an orderly manner on January 1, 2015, consistent with the Court’s order. The EPA is also taking comment on the amendments being made in this interim final rule and will consider whether to retain these revisions as promulgated or whether further revisions are necessary to make the CSAPR compliance deadlines consistent with the Court’s order.

DATES: This final rule is effective on December 3, 2014. The EPA will consider comments on this interim final rule received on or before February 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0491, by one of the following methods:

• www.regulations.gov: Follow the online instructions for submitting comments.

• Email: o-and-r-docket@epa.gov.

• Fax: (202) 566–9744.


• Hand delivery: EPA Docket Center, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attn: Docket ID No. EPA–HQ–OAR–2009–0491. Such deliveries are only accepted during the Docket’s normal hours of operation. The telephone and other arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0491. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov your email 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, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The EPA is including this action in Docket ID No. EPA–HQ–OAR–2009–0491, which is also the docket for the original CSAPR rulemaking and other related rulemakings. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., 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 electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. 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, and the telephone number for
This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. This table lists the types of entities of which the EPA is now aware that could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by CSAPR, you should carefully examine the applicability provisions in 40 CFR 97.404, 97.504, 97.604, and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

Judicial Review. Judicial review of this rule is available only by filing a petition for review in the D.C. Circuit on or before February 2, 2015. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of EPA final action under the CAA that is “nationally applicable” or that the Administrator determines is of “nationwide scope or effect” is available only in the D.C. Circuit. Because this rule amends regulations that apply to sources in 28 states, it is “nationally applicable” within the meaning of section 307(b)(1). For the same reason, the Administrator determines that this rule is of “nationwide scope or effect” for purposes of section 307(b)(1). CAA section 307(b)(1) also provides that filing a petition for reconsideration by the Administrator of this rule does not affect the finality of the rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Overview

The EPA issued the Cross-State Air Pollution Rule (CSAPR) 1 in July 2011 to address CAA requirements concerning interstate transport of air pollution and to replace the previous Clean Air Interstate Rule (CAIR) which the D.C. Circuit remanded to the EPA for replacement.2 Following the original rulemaking, CSAPR was amended by three further rules known as the Supplemental Rule,3 the First Revisions Rule,4 and the Second Revisions Rule.5 As amended, CSAPR requires 28 states to limit their state-wide emissions of sulfur dioxide (SO2) and/or nitrogen oxides (NOx) in order to reduce or eliminate the states’ unlawful contributions to fine particulate matter and/or ground-level ozone pollution in other states. The emissions limitations are defined in terms of maximum state-wide “budgets” for emissions of annual SO2, annual NOx, and/or ozone-season NOx by each state’s large electricity generating units (EGUs). The emissions budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets originally scheduled to apply to emissions in 2012 and 2013 and the Phase 2 budgets originally scheduled to apply to emissions in 2014 and later years.

As the mechanism for achieving compliance with the emissions limitations, CSAPR establishes federal implementation plans (FIPs) that require large EGUs in each affected state to participate in one or more new emissions trading programs that supersede the existing CAIR emissions trading programs. Interstate trading of CSAPR’s emission allowances is permitted, but the rule includes “assurance provisions” designed to ensure that individual states’ emissions in each Phase 2 compliance period do not exceed the states’ respective emissions budgets for that period by more than specified “variability limits.” CSAPR allows states to elect to revise their state implementation plans (SIPs) to modify or replace the FIPs while continuing to rely on the rule’s trading programs for compliance with the emissions limitations, and establishes certain requirements and deadlines.

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3 Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone, 76 FR 80760 (December 27, 2011).
5 Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 77 FR 34830 (June 12, 2012).
related to those optional SIP revisions. The rule also contains provisions that sunset CAIR compliance requirements on a schedule coordinated with the implementation of CSAPR compliance requirements.

Certain industry and state and local government petitioners challenged CSAPR in the D.C. Circuit and filed motions seeking a stay of the rule pending judicial review. On December 30, 2011, the Court granted a stay of the rule, ordering the EPA to continue administering CAIR on an interim basis. In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners’ claims, but on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings. Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay remained in place and the EPA has continued to implement CAIR.

Following the Supreme Court decision, in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings are held to resolve petitioners’ remaining claims, the EPA filed a motion asking the D.C. Circuit to lift the stay and to toll by three years all CSAPR compliance deadlines that had not passed as of the date of the stay order. On October 23, 2014, the Court granted the EPA’s motion. This action makes ministerial amendments to the dates in the CSAPR regulatory text in 40 CFR parts 51, 52, and 97 to clarify how the EPA will implement the rule consistent with the D.C. Circuit’s order lifting the stay and tolling the rule’s deadlines. Generally, this action tolls by three calendar years dates and years in the regulatory text as previously amended that had not passed as of December 30, 2011, the date of the stay order. The ministerial amendments restore parties and the rule to the status that would have existed but for the stay albeit three years later, preserve the rule’s internal consistency, render moot questions as to whether the Court’s order might not have tolled some of the individual dates being amended, and provide clarity to stakeholders and the public, thereby permitting orderly implementation of the rule.

The most fundamental amendments make clear that, consistent with the Court’s order, compliance with CSAPR’s Phase 1 emissions budgets is now required in 2015 and 2016 (instead of 2012 and 2013) and compliance with the rule’s Phase 2 emissions budgets and assurance provisions is now required in 2017 and beyond (instead of 2014 and beyond). Other amendments toll specific deadlines for sources to certify monitoring systems and to start reporting emissions, for the EPA to allocate and record emission allowances, and for states to take optional steps to modify or replace their CSAPR FIPs through SIP revisions.

Fortunately, no regulatory text is needed for implementation on the revised compliance schedule. Section III of this notice provides additional information on this rulemaking procedure and on the EPA’s findings of good cause to issue an immediately effective final rule without prior notice or opportunity for public comment. The EPA will consider any comments received and issue a final rule that either confirms these revisions or makes any further revisions that may be needed for implementation on the revised compliance schedule.

II. Specific Amendments to CSAPR Dates

This action amends dates appearing in regulatory text in 40 CFR parts 51, 52, and 97. Most of the amendments, addressing virtually all aspects of implementation of the CSAPR FIPs and trading programs, toll dates in the CSAPR trading program provisions in subparts AAAAA, BBBBB, CCCCC, and DDDDD of part 97 and in the additional CSAPR FIP provisions in §§ 52.38 and 52.39. The other amendments,
addressing the sunsetting of CAIR obligations and the CAIR trading programs, toll or otherwise reset dates in scattered sections of parts 51 and 52. No regulatory text other than dates is amended and no substantive changes to CSAPR are being made. The remainder of this section discusses the functions of the various dates being changed and identifies the specific CFRs being amended.

The EPA interprets the Court’s order lifting the stay as already tolling CSAPR deadlines that had not passed as of the date of the Court’s previous stay order, with the consequence that the corresponding regulatory text amendments in this action do not alter legal requirements or options but merely amend regulatory text to accurately reflect the timing of legal requirements and options as revised by the Court. With respect to the possibility that some of the dates amended in this action might not have been tolled by the Court’s order, all of the date changes are required to serve the purpose of the rule—to address states’ interstate transport obligations in an efficient and equitable manner—and the purpose of the Court’s order—to allow the rule to be implemented in accordance with the EPA’s motion. The rule’s various dates are elements of a carefully integrated design, and uncoordinated changes could disrupt that design and lead to inefficient and inequitable results. Therefore, to the extent that any of the date changes in this action may be outside the scope of the tolling already ordered by the Court, those changes are nevertheless necessary to provide for efficient, equitable, and orderly implementation of the rule consistent with the Court’s order. The necessity of specific date changes is further discussed below.

### A. Emissions Limitations and Assurance Provisions

The most fundamental amendments in this action toll the years in which compliance with CSAPR’s emissions limitations and assurance provisions is required, as well as the years in which the rule’s Phase 1 and Phase 2 emissions budgets, Phase 1 and Phase 2 “set-asides,” and Phase 2 variability limits apply. The compliance period definitions drive many of the rule’s specific requirements, and the budget applicability dates are key specifications affecting the rule’s stringency. These date changes were explicitly requested and discussed in the EPA’s motion to lift the stay and toll compliance deadlines by three years. As explained in the motion, tolling these deadlines by three years returns the rule and parties to the status quo that would have existed but for the stay, provides parties with sufficient time to prepare for implementation, and avoids unnecessary regulatory burden by retaining a calendar-year schedule for the rule’s annual trading programs. This rule makes no substantive changes to the emissions limitations or assurance provisions other than the revision of the deadlines.

The EPA also explained in the motion that CSAPR would be implemented as previously amended by the Supplemental Rule, the First Revisions Rule, and the Second Revisions Rule, and that dates first established or amended in those later rulemakings would also be tolled. Tolling of these dates is necessary to preserve CSAPR’s internal consistency and to provide for efficient and equitable implementation. For example, the Supplemental Rule established dates specifying the applicable compliance periods for the Phase 1 and Phase 2 ozone-season emissions budgets, set-asides, and variability limits that the Supplemental Rule established for five states. If dates first established by the Supplemental Rule were not tolled in 2015 and 2016 these five states would be subject to Phase 2 emissions budgets while all other states would be subject to Phase 1 emissions budgets, an inequitable outcome. In another example, the First Revisions Rule were not tolled from their previously amended starting points, the assurance provisions would apply in 2015, contrary to the rationale supporting their prior deferral until Phase 2.

The date changes relating to the compliance deadlines and applicable periods for the rule’s emissions limitations and assurance provisions are reflected in amendments to the following sections of 40 CFR:

- Sections 97.406(c)(3)(i), 97.506(c)(3)(i), 97.606(c)(3)(i), and 97.706(c)(3)(i) (applicable periods for emissions limitations);
- Sections 97.406(c)(3)(ii), 97.506(c)(3)(ii), 97.606(c)(3)(ii), and 97.706(c)(3)(ii) (applicable periods for assurance provisions);
- Sections 97.410(a), 97.510(a), 97.610(a), and 97.710(a) (applicable periods for Phase 1 and Phase 2 emissions budgets and set-asides);
- Sections 97.410(b), 97.510(b), 97.610(b), and 97.710(b) (applicable periods for Phase 2 variability limits); and
- Sections 97.425(b)(1), 97.525(b)(1), 97.625(b)(1), and 97.725(b)(1) (assurance provision administration deadlines).

### B. Monitoring System Certification and Emissions Reporting

Several amendments in this action toll CSAPR dates that define deadlines by which owners and operators of affected units must meet monitoring system certification requirements and begin submitting quarterly emissions reports. These date changes are necessary to coordinate the timing of these specific requirements with the revised timing of the rule’s emissions limitations and to avoid requiring sources to engage in certification and emissions reporting activities before those activities serve a useful purpose. The EPA’s motion indicated that the deadlines for CSAPR’s monitoring and reporting obligations would be tolled if the Court granted the motion. This rule makes no substantive changes to the monitoring and reporting requirements other than the revision of the deadlines.

The amendments to the certification and reporting deadlines toll several dates in the regulatory text earlier than December 30, 2011. The reason for tolling these dates is that their function in the rule is to define deadlines originally scheduled to occur after December 30, 2011. Specifically, the original regulatory text provides that units in operation for at least six months before implementation of the rule’s first emissions limitations—defined in the existing regulatory text as “unit[s] that commenced [commercial operation before July 1, 2011]”—become subject to reporting obligations for annual emissions occurring as of January 1, 2012, and are required to complete monitoring system certification by that same date. In contrast, units in
operation for less than six months before implementation of the rule’s first emission limitations—defined in the existing regulatory text as “unit[s] that commence[] commercial operation on or after July 1, 2011”—are given potentially later deadlines. Similarly, because the reporting deadlines for the newer units are defined in part by reference to events that could have occurred before implementation of the rule’s first emissions limitations, in order to avoid creation of reporting deadlines before January 1, 2012, the existing regulatory text contains language providing that reporting obligations do not apply with respect to “the third or fourth quarter of 2011.”

This action amends these 2011 dates, changing them to 2014 dates consistent with the change in initial implementation of the rule’s emissions limitations from 2012 to 2015 as ordered by the Court. If these amendments were not made, the regulatory text could require some sources commencing commercial operation on or after July 1, 2011, and before January 1, 2015, to begin reporting under CSAPR prior to 2015, a result that would be unnecessary, inefficient, inequitable, and inconsistent with the Court’s order.

The date changes related to CSAPR’s compliance deadlines for monitoring system certification and the applicable periods for emissions reporting are reflected in amendments to the following sections of 40 CFR:

- Sections 97.430(b)(1), 97.530(b)(1), 9.630(b)(1), and 97.730(b)(1) (certification deadlines for units that commence commercial operation at least six months before the first compliance period);
- Sections 97.430(b)(2), 97.530(b)(2)–(3), 97.630(b)(2), and 97.730(b)(2) (certification deadlines for newer units);
- Sections 97.434(d)(1)(i), 97.534(d)(1)(i) and (2)(ii)(A), 9.634(d)(1)(i), and 97.734(d)(1)(i) (applicable periods for emissions reporting by units that commence commercial operation at least six months before the first compliance period); and
- Sections 97.434(d)(1)(ii), 97.534(d)(1)(ii) and (2)(ii)(B), 97.634(d)(1)(ii), and 97.734(d)(1)(ii) (applicable periods for emissions reporting by newer units).

C. Allocation and Recordation of Emission Allowances

Some of the amendments in this action toll dates defining CSAPR deadlines by which the EPA must allocate and record emission allowances. The date changes are necessary to coordinate these deadlines with the rule’s compliance deadlines as defined by the Court’s order and to preserve states’ opportunities under the rule to substitute their own preferred allowance allocations for the EPA’s default allocations. More specifically, to facilitate allowance trading and compliance planning activities, the rule’s recordation deadlines require recordation of most CSAPR allowances up to four years in advance of the respective compliance periods. The rule also establishes default procedures by which the EPA allocates allowance quantities equal to each state’s emissions budgets among the EGUs in the state, but after the first compliance year the rule permits states to replace the EPA’s default allocations for most units through SIP revisions, as discussed below.

States’ opportunities to replace the default allocations extend only to allowances that have not yet been recorded. If the dates in the regulatory text defining the recordation deadlines were not changed consistent with the revised compliance deadlines established by the Court’s order, the unrevised recording deadlines could unnecessarily prevent states from controlling the allocations of allowances for certain compliance periods because the allowances would already have been recorded. This rule makes no substantive changes to the allowance allocation and recordation provisions other than the revision of the deadlines.

The EPA notes that the allocation date amendments include tolling a particular phrase from “after 2011” to “after 2014”. The phrase concerns allowance allocations to units that cease operations, and the effect of the change is that by default (i.e., unless the state revises the allocations) a retiring unit will continue to receive allocations of allowances for five compliance periods after the unit’s last year of operation, which in the case of a unit retiring between 2010 and 2014 would be the rule’s first five compliance periods from 2015 through 2019. The phrase “after 2011” indicates a date after December 30, 2011, making this a deadline that had not passed as of the date of the stay, and the EPA’s reply regarding the motion to lift the stay explicitly confirmed the intention to toll these specific dates.

The EPA also notes that some of the recordation deadlines being amended were initially established in the Supplemental Rule. These deadlines apply to the recordation of allowances for CSAPR’s first two compliance periods and affect only the ozone-season allowances for the five states covered by the Supplemental Rule. If the recordation deadlines established in the Supplemental Rule were not tolled—specifically, the March 26, 2012, recordation deadline for allowances for the rule’s second compliance year—while the analogous deadlines established for other states in the original CSAPR rulemaking were tolled, these five states alone would lack the opportunity to revise allowance allocations for the rule’s second compliance period, an inappropriate, unnecessary, and inequitable result.

The date changes related to administrative deadlines and applicable periods for allocation and recordation of allowances are reflected in amendments to the following sections of 40 CFR:

- Sections 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1) (applicable periods for default allowance allocations to existing units);
- Sections 97.411(a)(2), 97.511(a)(2), 97.611(a)(2), and 97.711(a)(2) (applicable periods for default allowance allocations to retired units);
- Sections 97.411(b)(1), 97.511(b)(1), 97.611(b)(1), and 97.711(b)(1) (administrative deadlines for default allowance allocations from new unit set-asides);
- Sections 97.411(b)(2), 97.511(b)(2), 97.611(b)(2), and 97.711(b)(2) (administrative deadlines for allowance allocations from Indian country new unit set-asides);
- Sections 97.411(c)(1), 97.511(c)(1), 97.611(c)(1), and 97.711(c)(1) (applicable periods for correction of incorrect allowance allocations);
- Sections 97.412(a), 97.512(a), 97.612(a), and 97.712(a) (applicable periods for default allowance allocations from new unit set-asides);
- Sections 97.412(b), 97.512(b), 97.612(b), and 97.712(b) (applicable periods for allowances from Indian country new unit set-asides);
- Sections 97.421(a)–(f), 97.521(a)–(f), 97.621(a)–(f), and 97.721(a)–(f) (administrative deadlines and applicable periods for allowance recordation for existing units); and
- Sections 97.421(g)–(i), 97.521(g)–(i), 97.621(g)–(i), and 97.721(g)–(i)

**Notes:**

22 See, e.g., 40 CFR 97.430(b)(2) and 97.434(d)(1)(ii).
24 States are not permitted to revise the recordation provisions or the provisions governing allocation of allowances from the Indian country new unit set-asides.
applicable to all states relating to optional SIP revisions to revise allowance allocations for later compliance periods are being tolled.30

The EPA notes that some of the SIP revision-related deadlines being amended were initially established in the Supplemental Rule. These deadlines apply to SIP revisions replacing default allowance allocations for CSAPR’s second compliance period but affect only the ozone-season allowances for the five states covered by the Supplemental Rule.31 Specifically, the regulatory text as currently amended provides that these states must notify the EPA by March 6, 2012, of their intent to modify allowance allocations for the rule’s second compliance year and must submit the corresponding SIP revisions by October 1, 2012. If these deadlines established in the Supplemental Rule were not tolled, while the April 1, 2012, deadline described above for other states was tolled, these five states alone would lack the opportunity to revise allowance allocations for the rule’s second compliance period, an inappropriate, unnecessary, and inequitable result.

The date changes related to notification and SIP revision filing deadlines for states that elect to modify or replace the FIPs are reflected in amendments to the following sections of 40 CFR:

• Sections 52.38(a)(3) and (b)(3), and 52.39(d) and (g) (SIP revisions to modify the FIP default allowance allocations for the second compliance period);

• Sections 52.38(a)(4) and (b)(4), and 52.39(e) and (h) (SIP revisions to modify the FIP default allowance allocations for the third compliance year and beyond);

• Sections 52.38(a)(5) and (b)(5), and 52.39(f) and (i) (SIP revisions to replace the FIPs for the third compliance year and beyond); and

• Sections 97.421(b), 97.521(b), 97.621(b), and 97.721(b) (interaction of SIP revision-related filing deadlines and allowance recordation deadlines for the second compliance year).

E. Sunsetting of CAIR

The remaining amendments in this action toll or reset deadlines associated with the sunsetting of CAIR. In 2008, the DC Circuit remanded CAIR to the EPA for replacement.32 Since that

The remaining amendments in this action toll or reset deadlines associated with the sunsetting of CAIR. In 2008, the DC Circuit remanded CAIR to the EPA for replacement.32 Since that
remand, the EPA has continued to implement CAIR in accordance with that and subsequent Court orders, first while CSAPR was developed and in the period leading up to its planned 2012 implementation, and then while CSAPR was stayed. When CSAPR is implemented in 2015, CAIR will sunset in compliance with the terms of the 2008 remand. The amendments in this action toll the dates in the existing regulatory text reflecting the originally planned 2012 sunset, replacing them with dates reflecting the 2015 sunset consistent with the Court’s order lifting the stay of CSAPR.

Several additional CAIR-related amendments reset deadlines for removal of CAIR NOX allowances from tracking system accounts. To prevent possible confusion over how many allowances are available for CSAPR compliance after CSAPR supersedes CAIR, CSAPR as originally issued provided for post-2011-vintage CAIR NOX allowances to be removed from tracking system accounts on November 7, 2011 (before the stay). The EPA removed the allowances by that deadline but then restored the allowances to the accounts in order to allow CAIR to continue to be implemented consistent with the Court’s stay order. This action sets a new deadline of March 3, 2015 for removal of post-2014-vintage CAIR NOX allowances, serving the original purpose of avoiding confusion over the number of allowances available for CSAPR compliance. The date changes related to the sunsetting of CAIR and removal of CAIR NOX allowances from tracking system accounts are reflected in amendments to the following sections of 40 CFR:

• Section 51.121(r)(2) (NOX SIP Call obligations);

• Sections 51.123(ff) and 51.124(a) (CAIR obligations);

• Sections 52.35(f) and 52.36(e) (CAIR FIPs);

• Sections 52.440(c) and 52.441(b) (Delaware);

• Sections 52.484(c) and 52.485(b) (District of Columbia);

• Section 52.898(c) (Louisiana);

• Sections 52.1186(c) and 52.1187(b) (Michigan);

• Sections 52.1584(c) and 52.1585(b) (New Jersey);

• Sections 52.2240(c) and 52.2241(b) (Tennessee);

• Sections 52.2283(b) and 52.2284(b) (Texas); and

• Sections 52.2587(c) and 52.2588(b) (Wisconsin).
III. Legal Authority, Administrative Procedures, and Findings of Good Cause

The EPA’s authority to issue the amendments in this action is provided by CAA sections 110 and 301 (42 U.S.C. 7410 and 7601).

The EPA is taking this action as a final rule without prior notice or opportunity for public comment because the EPA finds that the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.) good cause exemption applies here. In general, the APA requires that general notice of proposed rulemaking shall be published in the Federal Register. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(B).

While CAA section 307(d)(1)(B) also provides that, in general, actions to revise FIPs under CAA section 110(c) are subject to the procedural requirements set forth in section 307(d), including publication of a notice of proposed rulemaking in the Federal Register and provision of an opportunity for public comment, section 307(d)(1) also provides that section 307(d) does not apply in the case of any rule or circumstance referred to in APA section 553(b)(B). The EPA finds for good cause under APA section 553(b)(B) that provision of such notice and opportunity for comment in this case is impracticable or unnecessary.

The EPA finds that providing notice and an opportunity for comment before promulgation of the amendments in this final action is impracticable or unnecessary for the following reasons. First, to the extent that this action amends dates in the regulatory text that have already been tolled by the Court’s order, providing notice and an opportunity for comment is unnecessary because the revisions are merely a ministerial act intended to implement the Court’s order and it would generally serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue, particularly in the very short timeframe in which the EPA is required to begin implementing CSAPR consistent with the Court’s order. The EPA interprets the DC Circuit’s order as having already reset all legal deadlines under CSAPR, as amended, that had not passed as of December 30, 2011, the date of the stay. The EPA’s action to amend the regulatory text consistent with the effect of the Court’s order merely makes the regulatory text consistent with the actual legal requirements as revised by the Court. Such consistency promotes regulatory clarity prior to the revised compliance dates, including the January 1, 2015, start date for compliance with the rule’s emissions limitations.

Delaying clarification of the regulatory text in order to allow time to conduct notice-and-comment procedures would result in regulatory text that does not accurately reflect the legally effective compliance dates until a rulemaking could be completed. Because completion of a rulemaking with notice-and-comment procedures would not occur until after the start of the first compliance period, the delay in clarification of the regulatory text would create confusion that could disrupt orderly implementation of the rule, contrary to the purpose of the Court’s order and the public interest.

Second, to the extent that this action may amend any CSAPR dates that have not already been tolled by the Court’s order, providing notice and an opportunity for public comment is impracticable because the ten-week interval between the Court’s order and the January 1, 2015, start of compliance is insufficient time for completion of notice-and-comment rulemaking. As discussed in section II of this preamble, several of this action’s amendments change dates that were initially established or amended in the Supplemental Rule or the First Revisions Rule, and these dates must be tolled in the current action for consistency with other tolled dates in order to allow equitable and orderly implementation of CSAPR as already amended by these other rules. Some petitioners responding to the EPA’s motion suggested that the Court may lack the power to toll dates in CSAPR’s current regulatory text that were not established in the original CSAPR rulemaking under review by the Court (e.g., dates finalized in the Supplemental and Revisions Rules). If correct, this position would mean that, in this action, with respect to these particular dates, the EPA not only would be altering the appearance of the dates in the regulatory text but also would be amending the effective legal dates themselves. The EPA disagrees with petitioners’ narrow view of the Court’s equitable powers, but finds that, if this action is indeed amending the effective legal dates, good cause exists to make the amendments without prior notice or opportunity for comment because the changes are necessary for orderly implementation of the rule consistent with the Court’s order, and it is impracticable to provide notice and an opportunity for comment prior to the start of implementation. In a similar vein, as also discussed in section II above, the EPA notes that several of this action’s amendments toll dates in the regulatory text before December 30, 2011. The EPA interprets the Court’s order as tolling these dates because, as explained in section II, their function in the rule is to establish deadlines after December 30, 2011. However, in these instances as well, if this action is indeed amending the effective legal dates, the EPA finds that good cause exists to make the amendments without prior notice or opportunity for comment for the same reasons just stated.

As permitted by APA section 553(d) upon a finding of good cause, the EPA is also making this action tolling the dates in the CSAPR regulatory text effective immediately upon publication in the Federal Register. The EPA finds good cause to make this action immediately effective for the following reasons. The Court’s order lifting the stay of CSAPR and tolling the rule’s deadlines allows implementation of the rule’s emission limitations to begin on January 1, 2015. Promptly commencing implementation on January 1, 2015, is in the public interest because the rule will help states meet their interstate transport obligations under the CAA and protect air quality for millions of Americans. Finally, immediately amending the dates in the CSAPR regulatory text—i.e., before the January 1, 2015, start of implementation—in order to clarify and make internally consistent the timing of the rule’s requirements and elections will promote orderly implementation consistent with the Court’s order.

As just described, the EPA finds good cause to take this final action without prior notice or opportunity for public comment and to make this action

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33 The EPA’s finding that providing notice and an opportunity for comment before promulgation of the regulatory text amendments in this final action is impracticable, unnecessary, or contrary to the public interest also applies for purposes of section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), as referenced in section IV.K of this preamble.

34 The EPA’s motion was clear that the requested relief encompassed tolling of not only “the key compliance deadlines” concerning applicability of CSAPR’s emissions budgets and assurance provisions but also the “additional deadlines applicable to the EPA, the states, and utilities for reporting and other generally ministerial actions.” See EPA Motion at 14 and note 5.
effective immediately upon publication in the Federal Register. However, the EPA is also implementing this action on an interim basis only and is providing notice and an opportunity for comment on the content of the amendments. In particular, the EPA requests comment on whether, in order to be consistent with the Court’s order tolling CSAPR deadlines by three years, the provisions of this interim rule should become permanent or, alternatively, whether any date or year in the regulatory text amended by the interim final rule should either be restored to the date or year as it appeared in the regulatory text prior to promulgation of the interim final rule or should be changed to a date or year different from the date or year set in the interim final rule. The EPA is not reopening for comment any provisions of CSAPR other than the dates and years amended in the interim final rule for consistency with the Court’s order tolling CSAPR deadlines by three years. Issuance of this interim final rule, while also requesting comment, enables CSAPR to be implemented in an orderly manner beginning January 1, 2015, consistent with the Court’s order and also provides public notice and an opportunity for comment as to whether these revisions should be made permanent or whether further amendments to the regulatory text may be necessary to comply with the Court’s order. The EPA anticipates issuing a final rule confirming these revisions or making any further amendments to the CSAPR regulatory text that may be necessary following consideration of any comments received.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at http://www2.epa.gov/laws-regulations/laws-and-executive-orders.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. This action simply tolls the deadlines of CSAPR by three years, including the deadlines for the rule’s information collection requirements, consistent with the order of the DC Circuit lifting the previous stay of the rule.

C. Regulatory Flexibility Act

This action is not subject to the Regulatory Flexibility Act (RFA). The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b), as discussed in section III of this preamble.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply tolls the deadlines of CSAPR by three years consistent with the order of the DC Circuit lifting the previous stay of the rule.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will 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. This action simply tolls the deadlines of CSAPR by three years consistent with the order of the DC Circuit lifting the previous stay of the rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action simply tolls the deadlines of CSAPR by three years, consistent with the order of the DC Circuit lifting the previous stay of the rule. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48208, 48346 (August 8, 2011).

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply tolls the deadlines of the CSAPR FIPs implementing previously promulgated health or safety-based federal standards, consistent with the order of the DC Circuit lifting the previous stay of the rule.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This action simply tolls the deadlines of CSAPR by three years, consistent with the order of the DC Circuit lifting the previous stay of the rule. Consistent with Executive Order 12898 and the EPA’s environmental justice policies, the EPA considered effects on low-income, minority, and indigenous populations while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347–52 (August 8, 2011).

K. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided in the CRA if the agency makes a good cause finding that notice and comment rulemaking
procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section III of this preamble, including the basis for that finding.

List of Subjects

40 CFR Part 51

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

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 21, 2014.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, parts 51, 52, and 97 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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


§§ 51.121, 51.123, and 51.124 [Amended]

2. Part 51 is amended by removing “2012” and adding in its place “2015” in the following places:

a. Section 51.121(r)(2);

b. Section 51.123(ff)(2) through (4); and

c. Section 51.124(s)(2).

§§ 51.123 and 51.124 [Amended]

3. Part 51 is further amended by removing “December 31, 2011” and adding in its place “December 31, 2014” in the following places:

a. Section 51.123(ff)(1) introductory text; and

b. Section 51.124(s)(1) introductory text;

§ 51.123 [Amended]

4. Section 51.123 is amended in paragraphs (ff)(3) and (4) by removing “November 7, 2011” and adding in its place March 3, 2015”.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§§ 52.35, 52.36, 52.440, 52.441, 52.484, 52.485, 52.984, 52.1186, 52.1187, 52.1584, 52.1585, 52.2240, 52.2241, 52.2283, 52.2284, 52.2587, and 52.2588 [Amended]

6. Part 52 is amended by removing “2012” and adding in its place “2015” in the following places:

a. Section 52.35(f)(2) through (4);

b. Section 52.36(e)(2);

c. Section 52.440(c)(2) through (4);

d. Section 52.441(b)(2);

e. Section 52.484(c)(2) through (4);

f. Section 52.485(b)(2);

g. Section 52.984(c)(2) through (4);

h. Section 52.1186(c)(2) through (4);

i. Section 52.1187(b)(2);

j. Section 52.1584(c)(2) through (4);

k. Section 52.1585(b)(2);

l. Section 52.2240(c)(2) through (4);

m. Section 52.2241(b)(2);

n. Section 52.2283(b)(2) and (3);

o. Section 52.2284(b)(2);

p. Section 52.2587(c)(2) through (4); and

q. Section 52.2588(b)(2).

§§ 52.35, 52.36, 52.440, 52.441, 52.484, 52.485, 52.984, 52.1186, 52.1187, 52.1584, 52.1585, 52.2240, 52.2241, 52.2283, 52.2284, 52.2587, and 52.2588 [Amended]

7. Part 52 is further amended by removing “December 31, 2011” and adding in its place “December 31, 2014” in the following places:

a. Section 52.35(f)(2) introductory text;

b. Section 52.36(e)(1) introductory text;

c. Section 52.440(c)(1) introductory text;

d. Section 52.441(b)(1) introductory text;

e. Section 52.484(c)(1) introductory text;

f. Section 52.485(b)(1) introductory text;

g. Section 52.984(c)(1) introductory text;

h. Section 52.1186(c)(1) introductory text;

i. Section 52.1187(b)(1) introductory text;

j. Section 52.1584(c)(1) introductory text;

k. Section 52.1585(b)(1) introductory text;

l. Section 52.2240(c)(1) introductory text;

m. Section 52.2241(b)(1) introductory text;

n. Section 52.2283(b)(1) introductory text;

o. Section 52.2284(b)(1) introductory text;

p. Section 52.2587(c)(1) introductory text;

q. Section 52.2588(b)(1) introductory text.

PART 97—FEDERAL NOX BUDGET TRADING PROGRAM AND CAIR NOX AND SO2 TRADING PROGRAMS

10. 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.
16. Sections 97.425, 97.525, 97.625, and 97.725 are amended by removing “2015” wherever it appears and adding in its place “2018”.

17. Sections 97.430, 97.530, 97.630, and 97.730 are amended as follows:
   a. By removing “2012” wherever it appears and adding in its place “2015”; and
   b. By removing “2012” wherever it appears and adding in its place “2015”.

18. Sections 97.434, 97.534, 97.634, and 97.734 are amended as follows:
   a. By removing “2012” wherever it appears and adding in its place “2015”; and
   b. By removing “July 1, 2014” wherever it appears and adding in its place “July 1, 2014”.

ENvironmental Protection Agency

40 CFR Part 52


Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on September 17, 2014, to revise the Indiana state implementation plan (SIP). The submission revises the Indiana Administrative Code (IAC) definition of “References to the Code of Federal Regulations,” from the 2011 edition to the 2013 edition. There is also a revised definition of “Board.”

DATES: This rule is effective on February 2, 2015, unless EPA receives adverse comments by January 2, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0747 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.

2. Email: blakley.pamela@epa.gov.

3. Fax: (312) 692–2450.


Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2014–0747. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or other protected information to www.regulations.gov or email. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email 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 and with any disk or CD–ROM you submit. 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, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, 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, will be publicly available through this index.