

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA Approval date	Comments
<b>Section 182(f) NO<sub>x</sub> Exemptions</b>				
1-hour ozone .....	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	11/12/1993 .....	8/10/1994, 59 FR 40826.	
1-hour ozone .....	Clinton, Ingham, Eaton, and Genesee Counties.	7/1/1994 and 7/8/1994.	4/27/1995, 60 FR 20644.	
1-hour ozone .....	Kent, Ottawa, Muskegon, Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawassee, and Van Buren Counties.	7/13/1994 .....	1/26/1996, 61 FR 2428.	
1-hour ozone .....	Muskegon County	11/22/1995 .....	9/26/1997, 62 FR 50512.	
1997 8-hour ozone .....	Grand Rapids (Kent and Ottawa Counties), Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), Benzie County, Huron County and Mason County.	1/17/2015 .....	6/6/2006, 71 FR 32448.	

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R07-OAR-2016-0302; FRL-9948-15-Region 7]

**Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Cross-State Air Pollution Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve portions of a November 20, 2015, State Implementation Plan (SIP) submittal from Missouri concerning allocations of Cross-State Air Pollution Rule (CSAPR) emission allowances. Under CSAPR, large electricity generating units in Missouri are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO<sub>x</sub>) and one of CSAPR's two Federal trading programs for annual emissions of sulfur

dioxide (SO<sub>2</sub>). This action approves Missouri's adoption into its SIP of state regulations establishing state-determined allocations to replace EPA's default allocations to Missouri units of CSAPR allowances for annual NO<sub>x</sub> emissions and annual SO<sub>2</sub> emissions for 2017 and later years. EPA is approving the SIP revision because it meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provision of CSAPR's Federal trading programs for annual NO<sub>x</sub> emissions and annual SO<sub>2</sub> emissions as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those trading programs (as modified by the SIP revision) remain in place. The approval is being issued as a direct final rule without a prior proposed rule because EPA views it as uncontroversial and does not anticipate adverse comment. EPA is not acting at this time on the portion of Missouri's SIP submittal concerning allocations of CSAPR allowances for ozone-season NO<sub>x</sub> emissions.

**DATES:** This direct final rule will be effective August 12, 2016, without further notice, unless EPA receives adverse comment by July 28, 2016. If EPA receives adverse comment, we 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-R07-OAR-2016-0302, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219; telephone number: (913) 551-7041; email address: [gonzalez.larry@epa.gov](mailto:gonzalez.larry@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is being addressed in this document?
- II. Background on CSAPR and CSAPR-Related SIP Revisions
- III. Conditions for Approval of CSAPR-Related SIP Revisions
- IV. Missouri's SIP Submittal and EPA's Analysis
  - A. Missouri's SIP Submittal
  - B. EPA's Analysis of Missouri's Submittal
    1. Timeliness and Completeness of SIP Submittal
    2. Methodology Covering All Allowances Potentially Requiring Allocation
    3. Assurance That Total Allocations Will Not Exceed the State Budget
    4. Timely Submission of State-Determined Allocations to EPA
    5. No Changes to Allocations Already Submitted to EPA or Recorded
    6. No Other Substantive Changes to Federal Trading Program Provisions
- V. EPA's Action on Missouri's Submittal
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

**I. What is being addressed in this document?**

EPA is taking direct final action to approve the portions of a November 20, 2015, SIP submittal from Missouri concerning allocations of allowances used in the CSAPR<sup>1</sup> Federal trading programs for annual emissions of NO<sub>x</sub> and SO<sub>2</sub>. Large electricity generating units in Missouri are subject to CSAPR FIPs that require the units to participate in the Federal CSAPR NO<sub>x</sub> Annual Trading Program and the Federal CSAPR SO<sub>2</sub> Group 1 Trading Program.<sup>2</sup> Each of CSAPR's Federal trading programs includes default provisions governing the allocation among

<sup>1</sup> 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 DDDDD of 40 CFR part 97).

<sup>2</sup> EPA has proposed to replace the terms “Transport Rule” and “TR” in the text of the *Code of Federal Regulations* with the updated terms “Cross-State Air Pollution Rule” and “CSAPR.” 80 FR 75706, 75759 (December 3, 2015). Except where otherwise noted, EPA uses the updated terms here.

participating units of emission allowances used for compliance under that program. CSAPR also provides a process for the submission and approval of SIP revisions to replace EPA's default allocations with state-determined allocations.

The SIP revision approved in this action incorporates into Missouri's SIP state regulations establishing state-determined allowance allocations to replace EPA's default allocations to Missouri units of CSAPR NO<sub>x</sub> Annual allowances and CSAPR SO<sub>2</sub>

Group 1 allowances issued for the control periods in 2017 and later years. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provisions of the CSAPR NO<sub>x</sub> Annual Trading Program or the CSAPR SO<sub>2</sub> Group 1 Trading Program as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those programs (as modified by this SIP revision) remain in place.

Large electricity generating units in Missouri are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR NO<sub>x</sub> Ozone Season Trading Program. While Missouri's SIP submittal also seeks to replace the default allocations of CSAPR NO<sub>x</sub> Ozone Season allowances to Missouri units, EPA is not acting on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs has no effect on the CSAPR NO<sub>x</sub> Ozone Season Trading Program as applied to Missouri units, and the FIP requiring the units to participate in that program remains in place.

Section II of this document summarizes relevant aspects of the CSAPR Federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Missouri's SIP submittal, and Section V sets forth EPA's action on the submittal.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the

Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

## II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended, CSAPR requires twenty-eight Eastern states to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain three National Ambient Air Quality Standards (NAAQS): The 1997 ozone NAAQS, the 1997 annual fine particulate matter (PM<sub>2.5</sub>) NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS. The emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone-season NO<sub>x</sub> by each covered state's large electricity generating units. The budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four Federal emissions trading programs: A program for annual NO<sub>x</sub> emissions, a program for ozone-season NO<sub>x</sub> emissions, and two geographically separate programs for annual SO<sub>2</sub> emissions. CSAPR also established up to three FIPs applicable to the large electricity generating units in each covered state. Each CSAPR FIP requires a state's units to participate in one of the four 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.<sup>3</sup> 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 program for ozone-season NO<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. If a state wants to replace 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. A state whose units are subject to multiple CSAPR FIPs and Federal trading programs may submit SIP revisions to modify or replace the requirements under either some or all of those FIPs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.<sup>4</sup> Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in Section III below. 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.<sup>5</sup> 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.<sup>6</sup> 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 SIP that was the basis for a particular CSAPR FIP, 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 is full and unconditional.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.<sup>10</sup> However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. None of

<sup>3</sup> 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.

<sup>4</sup> CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. See § 52.38(a)(3), (b)(3); § 52.39(d), (g).

<sup>5</sup> § 52.38(a)(4), (b)(4); § 52.39(e), (h).

<sup>6</sup> § 52.38(a)(5), (b)(5); § 52.39(f), (i).

<sup>7</sup> § 52.38(a)(6), (b)(6); § 52.39(j).

<sup>8</sup> § 52.38(a)(5)(iv) and (v), (a)(6), (b)(5)(v) and (vi), (b)(6); § 52.39(f)(4) and (5), (i)(4) and (5), (j).

<sup>9</sup> § 52.38(a)(7), (b)(7); § 52.39(k).

<sup>10</sup> *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

the CSAPR emissions budgets applicable to Missouri units has been remanded.<sup>11</sup>

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would amend the Phase 2 emissions budget applicable to Missouri units under the CSAPR NO<sub>x</sub> Ozone Season Trading Program and would make technical corrections and nomenclature changes throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR Federal trading program regulations for annual NO<sub>x</sub>, ozone-season NO<sub>x</sub>, and SO<sub>2</sub> emissions at 40 CFR part 97.<sup>12</sup>

**III. Conditions for Approval of CSAPR-Related SIP Revisions**

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR Federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.<sup>13</sup> (The SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and Federal

trading program with a SIP and a substantively identical state trading program integrated with the Federal trading program.) The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each Federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the Federal program's default allocations to existing units<sup>14</sup> at 40 CFR 97.411(a), 97.511(a), 97.611(a), or 97.711(a), as applicable, and the Federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), or 97.711(b)(1) and 97.712(a), as applicable.<sup>15</sup> In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the Federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing any the disposition of otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the

Indian country NUSA allocation procedures.<sup>16</sup>

- *Assurance that total allocations will not exceed the state budget.* For each Federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.<sup>17</sup> Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder.

- *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.<sup>18</sup> Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

Units	Year of the control period	Deadline for submission to EPA of allocations or auction results
Existing .....	2017 and 2018 .....	June 1, 2016.
	2019 and 2020 .....	June 1, 2017.
	2021 and 2022 .....	June 1, 2018.
	2023 and later years .....	June 1 of the fourth year before the year of the control period.
Other .....	All years .....	July 1 of the year of the control period.

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or

any change to any allowance allocation determined and recorded by EPA under the Federal trading program regulations.<sup>19</sup>

- *No other substantive changes to Federal trading program provisions.* The

SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program

<sup>11</sup> Litigation concerning EPA's supplemental rule establishing the requirement for Missouri units to participate in the CSAPR NO<sub>x</sub> Ozone Season Trading Program is currently being held in abeyance. *Public Service Co. of Oklahoma v. EPA*, No. 12–1023 (D.C. Cir. filed January 13, 2012).

<sup>12</sup> 80 FR 75706, 75710, 75757 (December 3, 2015).

<sup>13</sup> 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

<sup>14</sup> In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is

a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A spreadsheet showing EPA's default allocations to existing units is posted at [www.epa.gov/crossstaterule/techinfo.html](http://www.epa.gov/crossstaterule/techinfo.html).

<sup>15</sup> § 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii); § 52.39(e)(1), (f)(1), (h)(1), (i)(1).

<sup>16</sup> See §§ 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii).

<sup>17</sup> § 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A); § 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

<sup>18</sup> § 52.38(a)(4)(i)(B) and (C), (a)(5)(i)(B) and (C), (b)(4)(ii)(B) and (C), (b)(5)(ii)(B) and (C); § 52.39(e)(1)(ii) and (iii), (f)(1)(ii) and (iii), (h)(1)(ii) and (iii), (i)(1)(ii) and (iii).

<sup>19</sup> § 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D); § 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

applicability as described below.<sup>20</sup> Any new definitions adopted in the SIP revision (in addition to the Federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.<sup>21</sup>

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Trading Program (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.<sup>22</sup>

- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.<sup>23</sup>

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the Federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.

- *Only non-substantive substitutions for the term "State."* The SIP revision may substitute the name of the state for the term "State" as used in the Federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively

change the trading program regulations.<sup>24</sup>

- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not include references to or impose requirements on any unit in any Indian country within the state's borders and must not include the Federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.<sup>25</sup>

#### IV. Missouri's SIP Submittal and EPA's Analysis

##### A. Missouri's SIP Submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from Missouri unlawfully affected other states' ability to attain or maintain the 1997 annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>26</sup> In a supplemental rulemaking, EPA determined that air pollution transported from Missouri also unlawfully affected other states' ability to attain and maintain the 1997 ozone NAAQS.<sup>27</sup> Missouri units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIPs that require participation in the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR SO<sub>2</sub> Group 1 Trading Program, and the CSAPR NO<sub>x</sub> Ozone Season Trading Program.<sup>28</sup>

On November 20, 2015, Missouri submitted to EPA an abbreviated SIP revision that, if all portions were approved, would replace the default allowance allocation provisions of all three CSAPR trading programs for the state's EGUs for the control periods in 2017 and later years with provisions establishing state-determined allocations for those control periods but that would leave the corresponding CSAPR FIPs and all other provisions of the trading programs in place. The SIP submittal generally consists of three duly adopted state rules, 10 CSR 10–6.372 (Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations), 10 CSR 10–6.374 (Cross-State Air Pollution Rule Ozone Season NO<sub>x</sub> Trading Allowance Allocations), and 10 CSR 10–6.376 (Cross-State Air Pollution Rule Annual SO<sub>2</sub> Trading Allowance Allocations). The three state rules are substantively identical except that each addresses a different CSAPR Federal trading program and allocates a different total quantity of allowances.

Each rule contains a table establishing specific amounts of allowances to be allocated for each control period in 2017 and later years to specified Missouri electricity generating units under the applicable CSAPR trading program. Each rule also establishes a NUSA for the applicable program for each control period and sets forth a procedure for allocating allowances from the NUSA to qualifying Missouri units.

The SIP revision was submitted to EPA by a letter from the Director of the Missouri Air Pollution Control Program. The letter and its enclosures describe steps taken by Missouri to provide public notice prior to adoption of the state rules.

In this rule, EPA is taking action on the portions of Missouri's SIP submittal relating to the CSAPR NO<sub>x</sub> Annual Trading Program and the CSAPR SO<sub>2</sub> Group 1 Trading Program. EPA is not taking action at this time on the portion of the SIP submittal relating to the CSAPR NO<sub>x</sub> Ozone Season Trading Program. As noted in section II above, EPA has proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. The proposal would reduce the ozone-season NO<sub>x</sub> emissions budgets for control periods in 2017 and later years for a number of states, including Missouri. Action on the portion of Missouri's SIP submittal addressing allocations of ozone-season NO<sub>x</sub> allowances would be premature while the proposed update is pending because there is a foreseeable potential conflict between the total amount of allowances that would be allocated to Missouri units under Missouri's state-determined allocation provisions, which are based on Missouri's current budget, and the total amount of allowances that could permissibly be allocated to the units under a final updated budget.

EPA has previously approved a separate Missouri SIP revision replacing the default allowance allocation provisions of the CSAPR NO<sub>x</sub> Annual Trading Program and the CSAPR NO<sub>x</sub> Ozone Season Trading Program for Missouri existing units for the control period in 2016.<sup>29</sup>

##### B. EPA's Analysis of Missouri's Submittal

As described in section IV.A above, at this time EPA is taking action on the portions of Missouri's SIP submittal relating to the CSAPR NO<sub>x</sub> Annual Trading Program and the CSAPR SO<sub>2</sub> Group 1 Trading Program but not the portion of the SIP submittal relating to

<sup>20</sup> § 52.38(a)(4), (a)(5), (b)(4), (b)(5); § 52.39(e), (f), (h), (i).

<sup>21</sup> § 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii); § 52.39(e)(1), (f)(2), (h)(1), (i)(2).

<sup>22</sup> § 52.38(b)(4)(i), (b)(5)(i).

<sup>23</sup> § 52.38(b)(4), (b)(5).

<sup>24</sup> § 52.38(a)(5)(iii), (b)(5)(iv); § 52.39(f)(3), (i)(3).

<sup>25</sup> § 52.38(a)(5)(iv), (b)(5)(v); § 52.39(f)(4), (i)(4).

<sup>26</sup> 76 FR 48208, 48213 (August 8, 2011).

<sup>27</sup> 76 FR 80760, 80763 (December 27, 2011).

<sup>28</sup> 40 CFR 52.38(a)(2), (b)(2); § 52.39(b); § 52.1326; § 52.1327.

<sup>29</sup> 80 FR 51131 (August 24, 2015).

the CSAPR NO<sub>x</sub> Ozone Season Trading Program. The analysis discussed in this section addresses only the portions of Missouri's SIP submittal on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the submittal on which EPA is taking action as "the submittal" or "the SIP revision" without repeating the qualification that at this time EPA is analyzing and acting on only portions of the SIP submittal.

#### 1. Timeliness and Completeness of SIP Submittal

Missouri's SIP revision seeks to establish state-determined allocations of CSAPR NO<sub>x</sub> Annual allowances and CSAPR SO<sub>2</sub> Group 1 allowances for the control periods in 2017 and later years. Under 40 CFR 52.38(a)(4)(i)(B) and 52.39(e)(1)(ii), the deadline for submission of state-determined allocations for the 2017 and 2018 control periods is June 1, 2016, which under §§ 52.38(a)(4)(ii) and 52.39(e)(2) makes December 1, 2015, the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Missouri submitted its SIP revision to EPA by a letter dated and delivered electronically on November 20, 2015, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Missouri's SIP revision was timely submitted and meets the applicable completeness criteria, it meets the condition under 40 CFR 52.38(a)(4)(ii) and 52.39(e)(2) for timely submission of a complete SIP revision.

#### 2. Methodology Covering All Allowances Potentially Requiring Allocation

Paragraphs 10 CSR 10–6.372(3) and 10 CSR 10–6.376(3) of the Missouri rules provide that the allowance allocation methodology adopted by Missouri in the SIP revision replaces the provisions of 40 CFR 97.411(a) and 97.611(a), respectively, thereby addressing all allowances that under the default allocation provisions for the Federal trading programs would be allocated to units considered existing units for CSAPR purposes (prior to allocation of any allowances set aside during the initial allocation process). The same Missouri rule paragraphs also provide that the state's allocation methodology replaces the provisions of 40 CFR 97.411(b)(1) and 97.412(a) and the provisions of 40 CFR 97.611(b)(1) and 97.612(a), respectively, thereby addressing allocation of allowances in the NUSAs established for Missouri

under the Federal trading programs. The CSAPR Federal trading program regulations do not establish any Indian country NUSAs for Missouri. The allocations provisions in the Missouri rules therefore enable Missouri's SIP revision to meet the condition under 40 CFR 52.38(a)(4)(i) and 52.39(e)(1) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

#### 3. Assurance That Total Allocations Will Not Exceed the State Budget

Paragraphs 10 CSR 10–6.372(3)(A)1. and 10 CSR 10–6.376(3)(A)1. of the Missouri rules provide for allowance allocations under each trading program to be made to specified units (including all Missouri units considered existing units for CSAPR purposes) in fixed amounts as set forth in tables referred to as "Table 1" in the state rules. The totals of the allowances allocated for each control period according to the two tables (45,818 CSAPR NO<sub>x</sub> Annual allowances and 160,959 CSAPR SO<sub>2</sub> Group 1 allowances) are less than Missouri's state budgets for the control periods in 2017 and later years under the respective trading programs (48,743 CSAPR NO<sub>x</sub> Annual allowances and 165,941 CSAPR SO<sub>2</sub> Group 1 allowances).<sup>30</sup> Paragraphs 10 CSR 10–6.372(3)(B)3.B. and 10 CSR 10–6.376(3)(B)3.B. of the Missouri rules establish NUSAs for each trading program, allocating to each NUSA for each control period an amount of allowances equal to the state budget for the trading program minus the total amount of allowances allocated according to the table for that trading program. As noted above, the CSAPR Federal trading program regulations do not establish Indian country NUSAs for Missouri. The only allowances available for allocation to Missouri units are therefore allowances allocated under the Missouri rules, and the only such allowances, which necessarily sum to the state budgets, are the allowances allocated according to the tables and the allowances allocated from the NUSAs. EPA has not yet allocated or recorded CSAPR allowances for the control periods in 2017 or later years. The allocation methodology in Missouri's SIP revision therefore meets the condition under 40 CFR 52.38(a)(4)(i)(A) and 52.39(e)(1)(i) that, for each trading program, the total amount of allowances allocated under the SIP revision (before the addition of any otherwise unallocated allowances from an Indian country NUSA) may not exceed the

state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by EPA.

#### 4. Timely Submission of State-Determined Allocations to EPA

The allocation tables in the Missouri rules establish the primary allowance allocations for all Missouri units that are considered existing units for CSAPR purposes. Paragraphs 10 CSR 10–6.372(3)(A)1.A. through D. and 10 CSR 10–6.376(3)(A)1.A. through D. of the Missouri rules provide for the state-determined allocations established according to the tables to be submitted to EPA by the following deadlines: Allocations for the control periods in 2017 and 2018, by June 1, 2016; allocations for the control periods in 2019 and 2020, by June 1, 2017; allocations for the control periods in 2021 and 2022, by June 1, 2018; and allocations for later control periods, by June 1 of the fourth year before the year of the control period. These submission deadlines match the deadlines under 40 CFR 52.38(a)(4)(i)(B) and 52.39(e)(1)(ii) described in Section III above for allocations to existing units. Paragraphs 10 CSR 10–6.372(3)(B)1. and 10–6.376(3)(B)1. of the Missouri rules provide for the state-determined allowance allocations to other units from the NUSAs for each control period to be submitted to EPA by July 1 of the year of the control period. These submission deadlines match the submission deadlines under 40 CFR 52.38(a)(4)(i)(C) and 52.39(e)(1)(iii) described in section III above for allocations to other units. Missouri's SIP revision therefore meets the conditions under 40 CFR 52.38(a)(4)(i)(B) and (C) and 52.39(e)(1)(ii) and (iii) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

#### 5. No Changes to Allocations Already Submitted to EPA or Recorded

The Missouri rules include no provisions allowing alteration of allocations after the allocation amounts have been provided to EPA and no provisions allowing alteration of any allocations made and recorded by EPA under the Federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(4)(i)(D) and 52.39(e)(1)(iv).

#### 6. No Other Substantive Changes to Federal Trading Program Provisions

Besides the provisions addressing allowance allocations discussed above, the Missouri rules contain certain

<sup>30</sup> 40 CFR 97.410(a)(11)(iv), 97.610(a)(7)(iv).

definitions. Paragraphs 10 CSR 10–6.372(2)(A) and 10 CSR 10–6.376(2)(A) incorporate by reference the Federal trading program definitions in 40 CFR 97.402 and 97.403 and the definitions in 40 CFR 97.602 and 97.603, respectively. Paragraphs 10 CSR 6.372(2)(B) and 10 CSR 10–6.376(2)(B) define a single term which is not defined in the Federal trading program regulations (“notification”), and paragraphs 10 CSR 6.372(2)(C) and 10 CSR 10–6.376(2)(C) refer to another Missouri rule for definitions of otherwise undefined terms. These definition provisions do not make substantive changes to the Federal trading program provisions.<sup>31</sup> EPA therefore determines that Missouri’s SIP revision meets the condition under 40 CFR 52.38(a)(4) and 52.39(e) of making no substantive changes to the Federal trading program regulations beyond the provisions addressing allowance allocations.

#### V. EPA’s Action on Missouri’s Submittal

EPA is taking direct final action to approve the portions of Missouri’s November 20, 2015, SIP submittal concerning allocations to Missouri units of CSAPR NO<sub>x</sub> Annual allowances and CSAPR SO<sub>2</sub> Group 1 allowances for the control periods in 2017 and later years. The approved revision adopts into the SIP the rules codified in Missouri’s regulations at 10 CSR 10–6.372 (Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations) and 10 CSR 10–6.376 (Cross-State Air Pollution Rule Annual SO<sub>2</sub> Trading Allowances Allocations). Following this approval, allocations of CSAPR NO<sub>x</sub> Annual allowances to Missouri units for the control periods in 2017 and later years will be made according to the provisions of Missouri’s SIP instead of CSAPR’s default allocation provisions at 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a), and allocations of CSAPR SO<sub>2</sub> Group 1 allowances to Missouri units for the control periods in 2017 and later

<sup>31</sup> EPA has proposed to make certain technical corrections to the CSAPR FIP and Federal trading program regulations in order to more accurately reflect EPA’s intent as described in the CSAPR rulemaking and has also proposed to replace “TR” with “CSAPR” throughout the regulations (for example, “TR NO<sub>x</sub> Annual unit” would become “CSAPR NO<sub>x</sub> Annual unit”). See 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA’s interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Missouri rules, EPA would interpret the Missouri rules as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR Federal regulations would explicitly provide that terms that include “CSAPR” encompass otherwise identical terms in approved SIP revisions that include “TR”.

years will be made according to the provisions of Missouri’s SIP instead of CSAPR’s default allocation provisions at 40 CFR 97.611(a), 97.611(b)(1), and 97.612(a). Approval of this SIP revision does not alter any provision of the CSAPR NO<sub>x</sub> Annual Trading Program or the CSAPR SO<sub>2</sub> Group 1 Trading Program as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those programs (as modified by this SIP revision) remain in place. EPA is approving the indicated portions of the SIP submittal because they meet the requirements of the CAA and EPA’s regulations for approval of an abbreviated SIP revision replacing EPA’s default allocations of CSAPR emission allowances with state-determined allocations, as discussed in section IV above.

Large electricity generating units in Missouri are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR NO<sub>x</sub> Ozone Season Trading Program. While Missouri’s SIP submittal also seeks to replace the default allocations of CSAPR NO<sub>x</sub> Ozone Season allowances to Missouri units, EPA is not acting on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs has no effect on the CSAPR NO<sub>x</sub> Ozone Season Trading Program as applied to Missouri units, and the FIP requiring the units to participate in that program remains in place.

#### VI. 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 Missouri Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### VII. 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. 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. Accordingly, 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 this rulemaking does not involve technical standards; 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 August 29, 2016. 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 dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 16, 2016.

**Mark Hague,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

**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 AA—Missouri**

- 2. In § 52.1320:
  - a. Revise the section heading.
  - b. In the table in paragraph (c), under Chapter 6, add entries “10–6.372” and “10–6.376” in numerical order.

The revisions read as follows:

**§ 52.1320 Identification of plan.**

\* \* \* \* \*

(c)\* \* \*

**EPA-APPROVED MISSOURI REGULATIONS**

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * * * *				
<b>Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * * * *				
10–6.372 .....	Cross-State Air Pollution Rule Annual NO <sub>x</sub> Trading Allowance Allocations.	12/30/15	6/28/16 [Insert <b>Federal Register</b> citation].	
10–6.376 .....	Cross-State Air Pollution Rule Annual SO <sub>2</sub> Trading Allowance Allocations.	12/30/15	6/28/16 [Insert <b>Federal Register</b> citation].	
* * * * *				

\* \* \* \* \*  
 [FR Doc. 2016–15048 Filed 6–27–16; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 435**

[EPA–HQ–OW–2014–0598; FRL–9947–87–OW]

RIN 2040–AF35

**Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is publishing a final Clean Water Act (CWA) regulation that protects human health, the environment

and the operational integrity of publicly owned treatment works (POTWs) by establishing pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas (UOG) extraction facilities to POTWs. UOG extraction wastewater can be generated in large quantities and contains constituents that are potentially harmful to human health and the environment. Certain UOG extraction wastewater constituents are not typical of POTW influent wastewater and can be discharged, untreated, from the POTW to the receiving stream; can disrupt the operation of the POTW (*e.g.*, by inhibiting biological treatment); can accumulate in biosolids (sewage sludge), limiting their beneficial use; and can facilitate the formation of harmful disinfection by-products (DBPs). Based on the information collected by EPA, the requirements of

this final rule reflect current industry practices for onshore unconventional oil and gas extraction facilities. Therefore, EPA does not project that the final rule will impose any costs or lead to pollutant removals, but will ensure that current industry best practice is maintained over time.

**DATES:** The final rule is effective on August 29, 2016. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on July 12, 2016. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings