

The EPA Administrator, Michael S. Regan, signed the following interim final rule on 10/29/2024, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Publishing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2021-0668. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 97**

**[EPA-HQ-OAR-2021-0668; FRL-8670.4-03-OAR]**

**RIN 2060-AW30**

### **Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards; Response to Judicial Stay**

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

**ACTION:** Interim final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking interim final action to stay, for emissions sources in California, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin, the effectiveness of the requirements established to address the obligations of these and other states to mitigate interstate air pollution with respect to the 2015 national ambient air quality standards (NAAQS) for ozone (the Good Neighbor Plan). The EPA is also revising certain other regulations to ensure the continued implementation of previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS while the effectiveness of the Good Neighbor Plan’s requirements is stayed. The stay and the associated revisions to other regulations are being issued in response to a judicial order staying enforcement of the Good Neighbor Plan as to the stay applicants pending judicial review.

**DATES:** This interim final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0668. All documents in the docket are listed on the <https://www.regulations.gov> website. 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 electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** David Lifland, Clean Air and Power Division, Office of Atmospheric Protection, Office of Air and Radiation, U.S. Environmental Protection Agency, Mail Code 6204A, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343-9151; email address: [lifland.david@epa.gov](mailto:lifland.david@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General**

#### *A. Potentially Affected Entities*

This action revises on an interim basis the Good Neighbor Plan (the Plan),<sup>1</sup> which includes regulations addressing emissions from electricity generating units (EGUs) and non-EGU industrial sources. This action also revises other allowance trading program regulations that apply to EGUs but not to non-EGU sources. The affected sources are generally in the following industry groups:

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<sup>1</sup> Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards, 88 FR 36654 (June 5, 2023).

Industry Group	North American Industry Classification System (NAICS) Code
Fossil Fuel Electric Power Generation	221112
Pipeline Transportation of Natural Gas	4862
Cement and Concrete Product Manufacturing	3273
Iron and Steel Mills and Ferroalloy Manufacturing	3311
Glass and Glass Product Manufacturing	3272
Basic Chemical Manufacturing	3251
Petroleum and Coal Products Manufacturing	3241
Pulp, Paper, and Paperboard Mills	3221
Metal Ore Mining	2122
Solid Waste Combustors and Incinerators	562213

As promulgated, the Plan applied to emissions sources in 23 states. The effectiveness of the Plan’s requirements for sources in Alabama, Arkansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nevada, Oklahoma, Texas, Utah, and West Virginia was stayed in previous actions. This action applies to sources in the remaining states covered by the Plan as promulgated: California, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin.

The information provided in this section on potentially affected entities is not intended to be exhaustive. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *B. Statutory Authority*

Statutory authority to issue the amendments finalized in this action is provided by the same Clean Air Act (CAA) provisions that provided authority to issue the regulations being amended: CAA section 110(a) and (c), 42 U.S.C. 7410(a) and (c) (state implementation plan (SIP) and federal implementation plan (FIP) requirements, including requirements for mitigation of interstate air pollution), and CAA section 301, 42 U.S.C. 7601 (general rulemaking authority).

Statutory authority for the rulemaking procedures followed in this action is provided by the Administrative Procedure Act (APA), 5 U.S.C. 553.

## **II. Response to Stay Order**

### *A. Background and Summary*

CAA section 110(a)(2)(D)(i)(I), also known as the “good neighbor” provision, requires each state’s SIP to include provisions sufficient to “prohibit[ ], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].” The EPA often refers to the emissions reduction requirements under this provision as “good neighbor obligations” and submissions addressing these requirements as “good neighbor SIPs.” CAA section 110(c)(1) requires the EPA Administrator to promulgate a FIP at any time within 2 years after the Administrator: (i) finds that a state has failed to make a required SIP submission; (ii) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (iii) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.

In March 2023, in accordance with CAA sections 110(a)(2)(D)(i)(I) and 110(c)(1), the EPA promulgated the Good Neighbor Plan, a rule determining the good neighbor obligations of 23 states with respect to the 2015 ozone NAAQS and establishing FIP requirements for emissions sources in the states to address the states’ obligations by reducing emissions of nitrogen oxides (NO<sub>x</sub>), an ozone precursor. Following the Plan’s promulgation, in response to judicial orders partially staying a separate EPA action as to several states, the EPA issued two

sets of interim amendments (referred to here as the First and Second Interim Final Rules) staying the Plan’s effectiveness for emissions sources in those states pending further EPA rulemaking.<sup>2</sup> As modified by the First and Second Interim Final Rules, the Plan applied to EGUs within the borders of Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin and to non-EGU sources within the borders of nine of the same ten states (all except Wisconsin) as well as California.<sup>3</sup> For EGUs, the Plan as promulgated requires affected sources to participate in the CSAPR NO<sub>x</sub> Ozone Season “Group 3” Trading Program as amended by the Plan starting with the 2023 ozone season (the period from May 1 through September 30 of each year). For non-EGU sources, the Plan as promulgated establishes source-specific compliance requirements that generally take effect starting with the 2026 ozone season.

The Plan’s compliance requirements for EGUs were coordinated with similar trading program-based compliance requirements established under two earlier EPA rules. Before the Plan was promulgated, EGUs in a set of states including Wisconsin were addressing these states’ good neighbor obligations with respect to the 2008 ozone NAAQS by participating in the CSAPR NO<sub>x</sub> Ozone Season “Group 2” Trading Program established under the CSAPR Update,<sup>4</sup> and EGUs in a set of states including Illinois, Indiana, Maryland, Michigan, New Jersey, New

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<sup>2</sup> Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards; Response to Judicial Stays of SIP Disapproval Action for Certain States, 88 FR 49295 (July 31, 2023); Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards; Response to Additional Judicial Stays of SIP Disapproval Action for Certain States, 88 FR 67102 (September 29, 2023).

<sup>3</sup> The Plan’s emissions reduction requirements apply to all emissions sources meeting the Plan’s applicability criteria within the borders of each covered state, including sources in Indian country within the borders of the state. *See* 88 FR 36690.

<sup>4</sup> Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

York, Ohio, Pennsylvania, and Virginia were addressing those states' good neighbor obligations with respect to the 2008 ozone NAAQS by participating in the pre-Plan version of the Group 3 trading program established under the Revised CSAPR Update.<sup>5</sup> In the Plan, the EPA's previous determinations concerning states' good neighbor obligations with respect to the 2008 ozone NAAQS were not altered, but the EPA allowed participation of the states' EGUs in the Group 3 trading program as amended by the Plan to serve as the compliance mechanism to address not only the EGU-related portions of the states' good neighbor obligations with respect to the 2015 ozone NAAQS but also the states' previously determined good neighbor obligations with respect to the 2008 ozone NAAQS.<sup>6</sup>

In October 2023, after failing to obtain a stay from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),<sup>7</sup> four sets of parties submitted emergency applications to the United States Supreme Court seeking a stay of some or all of the Good

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<sup>5</sup> Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021).

<sup>6</sup> See 88 FR 36844. For some states, participation of the states' EGUs in the Group 3 trading program was deemed to address the states' good neighbor obligations with respect to the 1997 ozone NAAQS as well. *Id.*

<sup>7</sup> Orders, *Utah v. EPA*, No. 23-1157 (D.C. Cir. September 25, 2023, and October 11, 2023); see also Order, *Utah v. EPA*, No. 23-1157 (D.C. Cir. December 4, 2023) (denying additional stay motions).

Neighbor Plan’s requirements.<sup>8</sup> In an opinion issued on June 27, 2024 (referred to here as the Stay Order), the Supreme Court granted the emergency applications and ordered that “[e]nforcement of EPA’s rule against the applicants shall be stayed” while judicial review of the Plan on the merits proceeds, first in the D.C. Circuit and then potentially in the Supreme Court.<sup>9</sup>

In this action, the EPA is responding to the Stay Order by administratively staying the effectiveness of the Plan’s requirements for all emissions sources subject to the Plan as promulgated, not just the applicants for a stay before the Supreme Court. The Agency’s determination on the scope of the administrative stay is discussed in section II.B. of this document. In addition, as discussed in section II.C. of this document, the EPA is modifying its trading program regulations for EGUs to ensure that the existing good neighbor obligations of Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin with respect to the 2008 ozone NAAQS will continue to be met while the administrative stay is in effect. The approach being taken with respect to the EGUs in these states in this action is the same as the approach taken with respect to the EGUs in similarly situated states in the First and Second Interim Final Rules. Section II.D. of this document

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<sup>8</sup> *Ohio v. EPA*, No. 23A349 (U.S. docketed October 18, 2023) (other named applicants are Indiana and West Virginia); *Kinder Morgan, Inc. v. EPA*, No. 23A350 (U.S. docketed October 18, 2023) (other named applicants are Enbridge (U.S.) Inc., TransCanada PipeLine USA Ltd., Interstate Natural Gas Association of America, and American Petroleum Institute); *American Forest & Paper Association v. EPA*, No. 23A351 (U.S. docketed October 18, 2023) (other named applicants are America’s Power, Associated Electric Cooperative, Inc., Deseret Power Electric Cooperative, Midwest Ozone Group, National Mining Association, National Rural Electric Cooperative Association, Ohio Valley Electric Corporation, Portland Cement Association, and Wabash Valley Power Alliance); *United States Steel Corporation v. EPA*, No. 23A384 (U.S. docketed October 31, 2023).

<sup>9</sup> *Ohio v. EPA*, 144 S. Ct. 2040, 2058 (2024).

describes the specific regulatory amendments being adopted in this action to implement the administrative stay and modify the trading programs.

The amendments to the regulatory requirements for EGUs and non-EGU sources that are being finalized in this action in response to the Stay Order are intended to apply on an interim basis until the Plan's requirements can be reimplemented, as appropriate and in accordance with the final judgment of a reviewing court, through a future rulemaking action. The EPA generally anticipates that any future action bringing the Plan's requirements into effect after a stay would phase in the requirements so as to provide lead times to implement the Plan's identified emissions control strategies comparable to the lead times that the Plan would have provided in the absence of the stay, thereby giving parties sufficient time to prepare for implementation.

#### *B. Scope of Administrative Stay*

The first issue addressed by this action concerns the scope of the administrative stay being implemented in response to the Stay Order, and specifically the treatment of emissions sources whose owners and operators were not among the applicants for a stay before the Supreme Court. By its terms, the Stay Order extends only to the applicants.<sup>10</sup> Three of the named applicants are states – Ohio, Indiana, and West Virginia – and although the Good Neighbor Plan imposes no requirements on states, the EPA interprets the Stay Order as applying to all EGUs and non-EGU sources meeting the Plan's applicability criteria that are located in these states.<sup>11</sup> The named industry applicants for a stay include several owners of EGUs or non-EGU sources

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<sup>10</sup> The applicants named in the four stay applications are listed *supra* note 8.

<sup>11</sup> The EPA has already implemented an administrative stay as to all EGUs and non-EGU sources in West Virginia in the Second Interim Final Rule in response to a previous judicial order. *See* 88 FR 67103–04.



expected to meet the Plan’s applicability criteria and several trade associations, including some trade associations whose identified members include other trade associations.<sup>12</sup> Beyond the individually named applicants, the full set of applicants also encompasses applicant trade associations’ members, which in turn includes members of trade associations that are applicants by virtue of their membership in other applicant trade associations.<sup>13</sup>

Through the members of the applicant trade associations, the Stay Order covers a broad range of the EGUs and non-EGU sources that would otherwise be subject to the Plan’s requirements in states other than Ohio, Indiana, and West Virginia. In the ordinary circumstances, if an EPA rule that requires pollution reductions becomes subject to a judicial stay, the Agency would apply the stay by its precise terms, because that approach would be expected to preserve the rule’s health and environmental benefits to the maximum extent possible while the stay remains in effect. However, in this instance, to continue enforcing the Plan’s requirements as to emissions sources not owned or operated by applicants while staying enforcement of the Plan’s requirements as to sources owned or operated by applicants, the EPA would need to use trade association membership as an applicability criterion in distinguishing among covered and noncovered sources, which would be an inherently uncertain method by which to make such determinations. Although, to the EPA’s knowledge, not all owners and

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<sup>12</sup> For example, Midwest Ozone Group has represented that its members include American Forest & Paper Association, American Iron and Steel Institute, American Wood Council, Appalachian Region Independent Power Producers Association, Council of Industrial Boiler Owners, Indiana Energy Association, Indiana Utility Group, National Lime Association, Ohio Utility Group, and Steel Manufacturers Association. *See* Midwest Ozone Group comments on proposed Good Neighbor Plan, at 1 (June 21, 2022) (EPA-HQ-OAR-2021-0668-0323), available in the docket.

<sup>13</sup> *See New York State Club Association v. City of New York*, 487 U.S. 1, 9–10 (1988).

operators of EGUs and non-EGU sources meeting the Plan’s applicability criteria were members of applicant trade associations when the applications for a stay were submitted or when the Stay Order was issued, an entity that is not already a member of an applicant trade association could choose to become one. The Stay Order does not speak to whether there is a specific point in time at which an entity must be a member of an applicant trade association to be covered by the Court’s stay as to applicants. The need to use trade association membership as an applicability criterion in this instance would therefore create uncertainty and a high likelihood of legal disputes over which individual sources must be excluded from enforcement of the Plan’s requirements during the pendency of the Stay Order.<sup>14</sup>

In short, in the specific circumstances of the Plan and the related litigation, continuing to enforce the Plan’s requirements for some sources but not others while using trade association membership as an applicability criterion to distinguish between covered and noncovered sources would entail extreme administrative complexity and such a degree of inherent uncertainty as to reach the point of impracticability. Accordingly, the EPA has determined that the only

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<sup>14</sup> The Agency reaches this conclusion only in light of the specific circumstances of the present case. The Agency does not view this decision as in any way precedential concerning how it would interpret, apply, or comply with any future judicial stay orders in any future matters, which necessarily would entail similarly case-specific review of all of the relevant facts and circumstances.

practicable way to comply with the Stay Order is to administratively stay enforcement of the Plan's requirements as to all sources covered by the Plan as promulgated.<sup>15</sup>

The EPA notes that in addition to being the only practicable means of complying with the Stay Order as to the Plan in these circumstances, the scope of the administrative stay being implemented in this action is consistent with the Supreme Court's rationale in granting the stay applications. The Court did not identify any specific, substantive flaw concerning the Plan's requirements for any regulated party, but rather preliminarily found that the EPA had likely failed to adequately respond to comments concerning the Plan's application if it were not in effect for one or more upwind states.<sup>16</sup> In implementing an administrative stay as to all sources covered by the Plan as promulgated, the Agency recognizes that the grounds on which the Court stayed enforcement of the Plan's requirements as to the applicants could have applied to any such source whose owner or operator had applied to the Court for relief.<sup>17</sup>

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<sup>15</sup> The regulatory revisions being adopted in this action to implement an administrative stay of the effectiveness of the Plan's requirements for sources in 11 states will have no immediate effect on sources in the 12 states for which such an administrative stay was already implemented in the First and Second Interim Final Rules. However, if a judicial order that caused the EPA to administratively stay the effectiveness of the Plan's requirements for one of the 12 states in the earlier rules is lifted, the EPA would not take rulemaking action to end the administrative stay for the sources in that state while the Supreme Court's Stay Order remains in effect.

<sup>16</sup> See 144 S. Ct. at 2053–54 & n.10.

<sup>17</sup> Significantly, the Supreme Court issued an opinion that identified a specific, but far-reaching, issue that the Court deemed to have been raised with sufficient specificity in particular comments but that it was likely the EPA had not adequately addressed. That issue and those comments are unique to the Plan. This action is also informed by the unusual posture here – on emergency applications to the Supreme Court – and the issuance of an opinion that has allowed the EPA to assess the relevance of the specific concern to other regulated parties. As such, the EPA does not presently find, and does not concede in taking this action, that the Supreme Court's rationale would necessarily extend to any other action the EPA may take, if such action does not contain the potential record deficiency that the Court had identified in the rulemaking record of the Good Neighbor Plan as originally promulgated.

### *C. Requirements to Meet Existing Good Neighbor Obligations*

The second issue addressed in this action concerns how to ensure that the previously determined good neighbor obligations of Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin with respect to the 2008 ozone NAAQS will continue to be met while the effectiveness of the Good Neighbor Plan's requirements is stayed. As noted in section II.A. of this document, before issuance of the Stay Order, participation of the EGUs in these ten states in the Group 3 trading program as amended by the Good Neighbor Plan was serving as the compliance mechanism for not only the EGU-related portions of the states' good neighbor obligations with respect to the 2015 ozone NAAQS but also the states' previously determined good neighbor obligations with respect to the 2008 ozone NAAQS. The Stay Order does not affect the states' good neighbor obligations as to the 2008 ozone NAAQS, which were determined in the CSAPR Update (for Wisconsin) and in the Revised CSAPR Update (for the other nine states), but it prevents the Group 3 trading program as amended by the Plan from being used as the compliance mechanism to address the obligations. Consequently, an alternate compliance mechanism is needed to address the states' good neighbor obligations with respect to the 2008 ozone NAAQS while the effectiveness of the Plan's requirements is stayed.

To address the 2008 ozone NAAQS good neighbor obligations for these ten states, the EPA is taking the same overall approach as was taken in the First and Second Interim Final Rules for states covered by earlier judicial orders. The central feature of the alternate compliance mechanism adopted under this approach is a requirement for the EGUs within the borders of the ten states to participate in the Group 2 trading program for the 2024 ozone season and future

ozone seasons while the effectiveness of the Plan’s requirements remains stayed.<sup>18</sup> The amounts of the state emissions budgets that will apply for each ozone season will be the amounts that would have applied for that ozone season under the CSAPR Update, for Wisconsin, or the Revised CSAPR Update, for the other nine states. Like EGUs in Alabama, Arkansas, Mississippi, Missouri, Oklahoma, and Texas, EGUs in Wisconsin participated in the Group 2 trading program immediately before implementation of the Plan and therefore will use “Original Group 2” allowances for compliance under the Group 2 trading program. Like EGUs in Kentucky, Louisiana, and West Virginia, EGUs in Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia participated in the pre-Plan version of the Group 3 trading program immediately before implementation of the Plan and therefore will use “Expanded Group 2” allowances for compliance under the Group 2 trading program.<sup>19</sup>

The amounts of the unit-level allocations of newly issued Group 2 allowances to EGUs within the borders of the ten states will be the same amounts of allowances that would have been allocated to the EGUs for the same ozone seasons under the CSAPR Update, for EGUs within the borders of Wisconsin, or under the Revised CSAPR Update, for EGUs within the borders of

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<sup>18</sup> Under both the Group 2 trading program and the Group 3 trading program, the programs’ primary requirements are “enforced” based on comparisons of sources’ reported emissions for the entire ozone season to the sources’ allowance holdings on a specified date after the end of the ozone season. Because these comparisons have not yet been made for the 2024 ozone season, to ensure compliance with the Stay Order as to the applicants, in this action the EPA is eliminating any use of the Plan’s state emissions budgets for the entire 2024 ozone season, including the portion of the ozone season that passed before issuance of the Stay Order.

<sup>19</sup> For further discussion of the regulatory provisions relating to Original Group 2 allowances and Expanded Group 2 allowances, see the First Interim Final Rule, 88 FR 49297–98.

the other nine states.<sup>20</sup> In almost all cases, the EPA will record the allocated amounts of newly issued 2024 Group 2 allowances in the sources' compliance accounts without adjustment. However, a small number of transactions involving 2024 Group 3 allowances occurred before issuance of the Stay Order. To preserve the substantive effect of these pre-stay transactions, the Agency will adjust the quantities of newly issued 2024 Group 2 allowances recorded in the relevant sources' compliance accounts upward or downward by the amounts of the pre-stay transactions on a 1-for-1 basis.<sup>21</sup> The EPA will deduct all 2024 Group 3 allowances from all compliance accounts and general accounts as soon as practicable on or after **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and will record the newly issued 2024 Group 2 allowances with these adjustments in sources' compliance

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<sup>20</sup> Unit-level allocations of Group 2 allowances (before any applicable adjustments) are made in accordance with a notice of data availability (NODA) issued by the EPA Administrator. *See* 40 CFR 97.811(a)(1). For EGUs within the borders of Wisconsin, the applicable NODA will be the NODA published at 81 FR 67190 (September 30, 2016) to implement the CSAPR Update. For EGUs within the borders of the other nine states, the applicable NODA will be the NODA published at 86 FR 26719 (May 17, 2021) to implement the Revised CSAPR Update. The provisions for state-determined allocations of Group 2 allowances included in the SIP revisions previously approved for Indiana and New York under the CSAPR Update before promulgation of the Revised CSAPR Update will not apply.

<sup>21</sup> Specifically, the recorded amounts of newly issued 2024 Group 2 allowances will differ from the allocated amounts as follows: a decrease of 3 allowances for Gilbert Generating Station (ID 2393) and an increase of 3 allowances for Warren (ID 3132) to reflect the pre-stay transfer of 3 2024 Group 3 allowances from Gilbert to Warren; a decrease of 50 allowances for Baldwin Energy Complex (ID 889) and an increase of 50 allowances for Midland Cogeneration Venture (ID 10745) to reflect the pre-stay transfer of 50 2024 Group 3 allowances from Baldwin to Midland; and a decrease of 8 allowances for PEI Power Corporation (also known as Archbald, ID 50279) to reflect the pre-stay deduction of 8 2024 Group 3 allowances to address Archbald's 2023 excess emissions. The EPA will not make any adjustments to reflect the pre-stay transfer of 570 2024 Group 3 allowances from Cardinal (ID 2828) to an Ohio Power Company general account or the pre-stay transfer of 285 2024 Group 3 allowances from Alcoa Allowance Management Inc. (also known as Warrick, ID 6705) to an Alcoa Allowance Management Inc. general account because these appear to be transfers between affiliated accounts with no substantive effect.

accounts as soon as practicable on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Consistent with the provisions applicable to EGUs in states covered by the First and Second Interim Final Rules, the EPA is providing EGUs in the ten states covered by this action an opportunity to have “banked” 2021-2023 Group 3 allowances converted to Group 2 allowances on a 1-for-1 basis.<sup>22</sup> To be converted, the Group 3 allowances must be held in the compliance account for an EGU within the borders of Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, or Wisconsin as of the conversion date, which will be as soon as practicable on or after **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Group 3 allowances held in the compliance accounts of EGUs in Wisconsin will be converted to Original Group 2 allowances, while Group 3 allowances held in the compliance accounts of EGUs in the other nine states will be converted to Expanded Group 2 allowances. Group 3 allowances held in other compliance accounts or in general accounts will not be converted.<sup>23</sup>

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<sup>22</sup> Pursuant to the administrative stay of the effectiveness of the Plan’s requirements (and in compliance with the Stay Order as to the stay applicants), the EPA will not carry out the recalibration of the bank of 2021-2023 Group 3 allowances that would otherwise have been scheduled to take place as soon as practicable on or after August 1, 2024.

<sup>23</sup> When the Stay Order was issued, to ensure compliance, the Agency immediately stopped accepting transfers of Group 3 allowances between accounts. In conjunction with the regulatory revisions being adopted in this action, the EPA has determined that transfers of 2021-2023 Group 3 allowances between accounts can be accepted again after all 2024 Group 3 allowances have been recalled. Following the date of the recall of 2024 Group 3 allowances, account holders will have a period of approximately 30 days to make any desired transfers of 2021-2023 Group 3 allowances between accounts before the date of the conversion of 2021-2023 Group 3 allowances to Group 2 allowances. The EPA intends to notify all account holders regarding the availability, conditions, and timing of the conversion opportunity.

Finally, revisions are needed to two sets of provisions that were adopted in earlier rules to address situations that could arise after an EGU transitions from one trading program to another trading program, because the provisions as previously designed cannot accommodate the greater complexity of transition patterns necessitated by the Stay Order. The first set of provisions governs how EGUs that have transitioned between trading programs may use allowances from later trading programs to meet surrender requirements for past ozone seasons under earlier trading programs. The EPA is preserving the core functionality of these provisions by revising them to employ a simpler approach under which certain allowances from an EGU's current trading program may be used to meet certain surrender obligations under a previous trading program on a 1-for-1 basis. The second set of provisions governed potential future conversions of allowances that had been allocated for past ozone seasons but had not yet been recorded. The potential situation these provisions were designed to address has never arisen in practice, and the EPA is removing the provisions instead of revising them.

#### *D. Specific Regulatory Revisions*

This section describes the specific regulatory amendments that the EPA is adopting to carry out the Agency's response to the Stay Order. Supplementing the descriptions in this section, the EPA is also adding documents to the docket showing all the regulatory revisions that are being adopted in this action in redline-strikeout format.

The principal amendment to 40 CFR part 52 that the EPA is adopting to stay the effectiveness of the Good Neighbor Plan's requirements for non-EGU sources within the borders of California, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia is a revision to the existing provision at § 52.40(c)(4), which under



the First and Second Interim Final Rules stayed the effectiveness of the Plan's requirements for non-EGU sources within the borders of Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Texas, Utah, and West Virginia.<sup>24</sup> The revision in this action expands the provision's list of states to include the remaining ten states where requirements for non-EGU sources would otherwise apply under the Plan as promulgated. In addition, parallel provisions staying the effectiveness of the Plan's requirements for non-EGU sources are being added to the state-specific subparts of part 52 for each of the relevant states.<sup>25</sup>

The amendments to 40 CFR parts 52 and 97 that the EPA is adopting to stay the effectiveness of the Good Neighbor Plan's requirements for EGUs within the borders of Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin while ensuring continued implementation of requirements established to address good neighbor obligations under rules promulgated before the Plan include the following:

- New provisions are being added at § 52.38(b)(2)(iii)(D)(5) and (4) to stay the effectiveness of requirements for EGUs within the borders of Wisconsin and the other nine states, respectively, to participate in the Group 3 trading program for ozone seasons after 2023, and the existing provisions at § 52.38(b)(2)(ii)(D)(2) and (1), which require EGUs within the borders of most states covered by the First and Second Interim Final Rules to participate in the Group 2 trading program while the effectiveness of the Plan's

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<sup>24</sup> See 88 FR 49297–98; 88 FR 67104.

<sup>25</sup> See §§ 52.284(b) (California), 52.731(c)(2) (Illinois), 52.789(c)(2) (Indiana), 52.1084(c)(2) (Maryland), 52.1186(f)(2) (Michigan), 52.1584(f)(2) (New Jersey), 52.1684(c)(2) (New York), 52.1882(c)(2) (Ohio), 52.2040(c)(2) (Pennsylvania), and 52.2440(c)(2) (Virginia).

requirements is stayed,<sup>26</sup> are being revised to extend the provisions to EGUs within the borders of Wisconsin and the other nine states, respectively. Parallel provisions are also being added to the state-specific subparts of part 52 for each of the relevant states.<sup>27</sup>

- The existing provisions at § 52.38(b)(2)(ii)(D)(1) and (b)(16)(ii)(A), which apply to states covered by the Revised CSAPR Update and the Plan as originally promulgated and address, among other things, the effects of SIP revisions approved to modify or replace the federal Group 2 trading program regulations, are being revised to provide that for EGUs in states for which the EPA has approved such SIP revisions, the EPA will administer the trading program in accordance with the SIP revisions, but only for SIP revisions approved after the effective date of this rule. The analogous existing provisions at § 52.38(b)(2)(ii)(D)(2) and (b)(16)(ii)(B), which apply to states covered by the CSAPR Update and the Plan as originally promulgated but not by the Revised CSAPR Update, will continue to apply with respect to SIP revisions approved either before or after this rule.
- The existing provisions at § 97.810(a) and (b), which identify the amounts of state emissions budgets, new unit set-asides, Indian country new unit set-asides, and variability limits by state and ozone season under the Group 2 trading program, are being revised to provide the same amounts for each of the ten states for ozone seasons after 2023 as would

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<sup>26</sup> The provisions at § 52.38(b)(2)(ii)(D) do not apply to EGUs within the borders of Minnesota, Nevada, or Utah because these EGUs are not subject to previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS. *See* 88 FR 67104.

<sup>27</sup> *See* §§ 52.731(b)(6) (Illinois), 52.789(b)(6) (Indiana), 52.1084(b)(6) (Maryland), 52.1186(e)(6) (Michigan), 52.1584(e)(6) (New Jersey), 52.1684(b)(6) (New York), 52.1882(b)(6) (Ohio), 52.2040(b)(6) (Pennsylvania), 52.2440(b)(6) (Virginia), and 52.2587(e)(6) (Wisconsin).

have been provided under the CSAPR Update or the Revised CSAPR Update (for Wisconsin or the other nine states, respectively) in the absence of the Plan. The amounts of the unit-level allocations of Group 2 allowances from the state emission budgets will be determined in accordance with § 97.811(a) as previously amended by the First Interim Final Rule.

- The existing provisions at § 97.821(e) and (f), which establish schedules for recording Group 2 allowances in sources' compliance accounts, and the existing provisions at § 97.811(d)(1) and (e)(1), which governed recalls of 2024 Group 2 allowances during the earlier transitions of states out of the Group 2 trading program, are being revised to establish the schedule for recording allocations of the new 2024 Group 2 allowances to be issued in response to the Stay Order and to more clearly distinguish these newly issued 2024 Group 2 allowances from the previously issued 2024 Group 2 allowances that were recorded in 2020 and then recalled during trading program transitions in 2021 and 2023.
- A new provision is being added at § 97.1011(d) to recall all 2024 Group 3 allowances previously recorded under the Plan and currently held in any compliance account or general account. To preserve the substantive effect of transfers and deductions of 2024 Group 3 allowances that occurred before issuance of the Stay Order and this recall, the revised recordation provision at § 97.821(e)(3) requires corresponding positive or negative adjustments to be made to the quantities of the newly issued 2024 Group 2 allowances that will be recorded in the relevant sources' compliance accounts.

- A new provision is being added at § 97.1026(e)(2)<sup>28</sup> to convert all banked 2021-2023 Group 2 allowances that as of the conversion date are held in the compliance accounts of EGUs within the borders of the ten states to Original Group 2 allowances or Expanded Group 2 allowances (for EGUs within the borders of Wisconsin or the other nine states, respectively) on a 1-for-1 basis.
- The existing provisions at §§ 97.526(e), 97.826(f), and 97.1026(f), which address how EGUs that have transitioned between trading programs may use allowances from later trading programs to meet surrender requirements for past ozone seasons under earlier trading programs, are being revised to prospectively apply a uniform approach where certain allowances from an EGU's current trading program may be used for this purpose on a 1-for-1 basis.
- The existing provisions at §§ 97.526(d)(2) and 97.826(d)(3) and (e)(2), which addressed potential future conversions of not-yet-recorded allowances that have been allocated for a past ozone season under one trading program to EGUs that have transitioned to another trading program, are being removed.
- The existing provisions at §§ 97.830(b)(1) and 97.834(d)(2)(i), which establish deadlines for affected units to commence monitoring and reporting activities under the Group 2 trading program, are being revised to provide each affected EGU within the borders of the ten states the same deadlines as would have applied to that EGU in the absence of the Plan.

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<sup>28</sup> The previous § 97.1026(e)(2) is being redesignated as § 97.1026(e)(1)(ii).

- Conforming updates and other minor technical corrections are being made as necessary to the provisions at §§ 52.38(b)(14)(iii), 97.806(c)(4)(iv), 97.824(c)(2)(ii), 97.826(b) and (e)(1), 97.1024(c)(2)(ii), and 97.1026(b) and (e)(1) and several definitions in §§ 97.502, 97.802, and 97.1002, as well as to the provisions identified in previous items in this list.

### **III. Rulemaking Procedures and Findings of Good Cause**

The EPA’s authority for the rulemaking procedures followed in this action is provided by 5 U.S.C. 553.<sup>29</sup> In general, an agency issuing a rule under the procedures in section 553 must provide prior notice and an opportunity for public comment, but section 553(b)(B) includes an exemption from notice-and-comment requirements “when the 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.” This action is being issued as an interim final rule without prior notice or opportunity for public comment because the EPA finds that the APA “good cause” exemption from notice-and-comment requirements applies here.

The basis for the finding of good cause is that following notice-and-comment procedures is unnecessary and impracticable for this action. With respect to the scope of the administrative stay being implemented in this action, the EPA has no discretion to enforce the Good Neighbor Plan’s requirements against emissions sources located in applicant states or owned or operated by applicant industry entities while the Stay Order remains in effect. Further, as explained in

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<sup>29</sup> Under CAA section 307(d)(1)(B), the EPA’s revision of a FIP under CAA section 110(c) would normally be subject to the rulemaking procedural requirements of CAA section 307(d), including notice-and-comment procedures, but CAA section 307(d) does not apply “in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of [5 U.S.C. 553(b)].” CAA section 307(d)(1).

section II.B. of this document, continuing to enforce the Plan’s requirements against any sources owned and operated by non-applicants and using the applicability criterion of whether a given source is or is not owned or operated by a member of an applicant trade association to distinguish covered sources from noncovered sources is not a practicable option to comply with the Stay Order. With respect to the regulatory revisions that provide an alternate mechanism for EGUs in states where the Plan is newly stayed to continue to address the states’ good neighbor obligations with respect to other ozone NAAQS, while some superficial discretion exists concerning the specific design of the regulatory revisions, no discretion exists as to the function of that design, which is to restore requirements substantively identical to those that would have applied in the absence of the Plan. As explained in section II.C. of this document, the EPA’s design for the regulatory revisions in this action accomplishes this function. Taking comment so as to allow the public to advocate for not staying the effectiveness of the Good Neighbor Plan’s requirements, not adopting regulatory revisions needed to implement requirements substantively identical to those that would have applied in the absence of the Plan, or adopting superficially different regulatory revisions to accomplish the same function would serve no purpose and is therefore unnecessary.

Following notice-and-comment procedures for this action would also be impracticable. Even though no specific statutory or judicial deadline applies, this action nevertheless needs to be completed quickly to provide clarity to the regulated community about the regulatory requirements that apply during a stay and to ensure that states’ good neighbor obligations with respect to the 2008 ozone NAAQS continue to be met. The EPA has acted expeditiously to respond to the Stay Order. If the contents of this action were instead issued in the form of a

proposal subject to notice-and-comment procedures, the comment period and the time needed after the close of the comment period to review any comments, prepare responses, and draft and review a final rule would likely require at least 90 additional days, extending the period before parties would know their regulatory requirements to six months or more after the issuance of the Stay Order.

The regulatory revisions made in this action will take effect immediately upon publication of the action in the *Federal Register*. In general, an agency issuing a rule under 5 U.S.C. 553 must provide for a period of at least 30 days between the rule's dates of publication and effectiveness, but section 553(d) specifies several exceptions to that general requirement, including two that apply to this action.

First, under section 553(d)(1), an exception applies to a rule that “grants or recognizes an exemption or relieves a restriction.” Because the portions of this action that stay the effectiveness of the Plan's requirements for emissions sources in certain states grant or recognize an exemption (on an interim basis while the Stay Order remains in place), the normal 30-day minimum period between this action's dates of publication and effectiveness is not required. The EPA is making these portions of the action effective as of the action's publication date to comply with the Stay Order in a timely manner.

Second, under section 553(d)(3), the normal 30-day minimum period between a rule's dates of publication and effectiveness does not apply “as otherwise provided by the agency for good cause found and published with the rule.” With respect to the portions of this action that provide an alternate mechanism for EGUs in states where the Plan is newly stayed to continue to address the states' good neighbor obligations under rules issued before the Plan, the EPA finds

good cause to make the regulatory revisions effective as of the action’s publication date for the following reasons. First, these regulatory revisions benefit the public by avoiding the possibility that interruption of the previously established requirements would cause air quality degradation. Second, these regulatory revisions benefit the regulated community by clarifying the regulatory requirements that apply in light of the Stay Order. Finally, making these regulatory revisions effective less than 30 days after this action’s publication date does not conflict with the purpose of the normal requirement for a 30-day minimum period, which is “to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.”<sup>30</sup> The regulatory revisions in this action ensuring the continued achievement of states’ previously established good neighbor obligations impose no requirements on any emissions source that differ substantively from the requirements that would have applied to that source in the absence of the Plan. Thus, no affected party needs time to adjust its behavior in preparation for these regulatory revisions.

#### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review*

This action is a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket.

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<sup>30</sup> *Omnipoint Corporation v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996).



### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB has previously approved the information collection activities that will apply to the EGUs affected by this action and has assigned OMB control numbers 2060-0258, 2060-0667, and 2060-0745. Additional information collection activities that will apply to non-EGU sources under the Good Neighbor Plan have been submitted to the OMB for approval in conjunction with that rulemaking. This action makes no changes to the information collection activities under the previously approved information collection requests (ICRs) for EGUs or the additional information collection activities for which approval has been requested in the Plan’s ICR for non-EGU sources.

### *C. Regulatory Flexibility Act*

This action is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under 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)(B).

### *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. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply stays the effectiveness of certain regulatory requirements for certain emissions sources on an interim basis in response to a procedural court order while ensuring that previously applicable regulatory requirements continue to be met.

*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 stays the effectiveness of certain regulatory requirements for certain emissions sources on an interim basis in response to a procedural court order while ensuring that previously applicable regulatory requirements continue to be met.

*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 stays the effectiveness of certain regulatory requirements for certain emissions sources on an interim basis in response to a procedural court order while ensuring that previously applicable regulatory requirements continue to be met. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks 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 responds to a court order issued by the United States Supreme Court and the EPA lacks discretion to deviate from the order. The EPA’s assessment of

health and climate benefits for the action establishing the requirements that are being stayed is discussed in Chapter 5 of the Regulatory Impact Analysis for the Good Neighbor Plan.<sup>31</sup>

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply stays the effectiveness of certain regulatory requirements for certain emissions sources on an interim basis in response to a procedural court order while ensuring that previously applicable regulatory requirements continue to be met.

*I. National Technology Transfer and 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 and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All*

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action responds to a court order issued by the United States Supreme Court and the EPA lacks discretion to deviate from the order. The EPA’s assessment of environmental justice

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<sup>31</sup> See Regulatory Impact Analysis for the Final Federal Good Neighbor Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard, at 197–257 (March 2023) (EPA-HQ-OAR-2021-0668-1115), available in the docket.

considerations for the action establishing the requirements that are being stayed is discussed in section VII. of the Good Neighbor Plan preamble.<sup>32</sup>

#### *K. Congressional Review Act*

This action is subject to the Congressional Review Act (CRA), 5 U.S.C. 801-808, 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 by 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 document, including the basis for that finding.

#### *L. Judicial Review*

CAA section 307(b)(1) governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions that are based on a determination of nationwide scope or

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<sup>32</sup> See 88 FR 36844–46.

effect, the CAA reserves to the EPA complete discretion to decide whether to invoke the provision in (ii).<sup>33</sup>

This action is “nationally applicable” within the meaning of CAA section 307(b)(1). In this action, in response to a court order, the EPA is amending on an interim basis the Good Neighbor Plan,<sup>34</sup> a nationally applicable rule that the EPA developed by applying a uniform legal interpretation and common, nationwide analytical methods to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of pollution (*i.e.*, “good neighbor” requirements) for the 2015 ozone NAAQS. Based on that nationwide analysis, the Good Neighbor Plan established FIP requirements for emissions sources in 23 states located across eight EPA Regions and ten federal judicial circuits. Given that this action amends an action implementing the good neighbor requirements of CAA section 110(a)(2)(D)(i)(I) in a large number of states located across the country and given the interdependent nature of interstate pollution transport and the common core of knowledge and analysis involved in promulgating the FIP requirements, this action is a “nationally applicable” action within the meaning of CAA section 307(b)(1).

In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide

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<sup>33</sup> In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

<sup>34</sup> The Good Neighbor Plan is nationally applicable or based on a determination of nationwide scope or effect found and published by the EPA. *See* 88 FR 36859–60.

scope or effect” within the meaning of CAA section 307(b)(1). In this action, in response to a court order, the EPA is amending on an interim basis the Good Neighbor Plan, an action in which the EPA interpreted and applied CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental United States. Based on that nationwide analysis, the Good Neighbor Plan established FIP requirements for emissions sources in 23 states located across eight EPA Regions and ten federal judicial circuits. In response to a court order, this action temporarily stays the implementation of the Good Neighbor Plan for emissions sources in eleven states located across four EPA Regions and six federal judicial circuits and also implements necessary measures to ensure the status quo is maintained with respect to existing obligations under previously issued regulations (that were themselves nationally applicable or based on a determination of nationwide scope or effect found and published by the EPA<sup>35</sup>).

The Administrator finds that, like the Good Neighbor Plan, which it amends, this action is a matter on which national uniformity in judicial resolution of any petitions for review is desirable, to take advantage of the D.C. Circuit’s administrative law expertise, and to facilitate the orderly development of the basic law under the Act. The Administrator also finds that consolidated review of this action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different states, and that a nationally consistent approach to the CAA’s mandate concerning interstate transport of ozone pollution constitutes the best use of Agency resources.

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<sup>35</sup> See 86 FR 23163–64 (Revised CSAPR Update); 81 FR 74585–86 (CSAPR Update).

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is publishing that finding in the *Federal Register*. Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the D.C. Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

## **List of Subjects**

### *40 CFR Part 52*

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

### *40 CFR Part 97*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Michael S. Regan,  
Administrator.



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

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart A—General Provisions**

2. Amend § 52.38 by:

- a. Revising and republishing paragraphs (b)(2)(ii)(D)(1) introductory text, (b)(2)(ii)(D)(1)(i), and (b)(2)(ii)(D)(2) introductory text;
- b. Adding paragraphs (b)(2)(iii)(D)(4) and (5); and
- c. Revising and republishing paragraphs (b)(14)(iii) and (b)(16)(ii).

The revisions, republications, and additions read as follows:

**§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(D) \* \* \*

(1) While a stay under paragraph (b)(2)(iii)(D)(1) or (4) of this section is in effect for the sources in a State and Indian country located within the borders of such State with regard to emissions occurring in a control period in a given year—

(i) The provisions of subpart EEEEE of part 97 of this chapter (as modified in any approval after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** of a SIP revision for such State by the Administrator under paragraph (b)(8) of this section) or the provisions of a SIP revision approved after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** for such State by the Administrator under paragraph (b)(9) of this section, if any, shall apply to the sources in such State and areas of Indian country within the borders of such State subject to the State’s SIP authority, and the provisions of subpart EEEEE of part 97 of this chapter shall apply to the sources in areas of Indian country within the borders of such State not subject to the State’s SIP authority, with regard to emissions occurring in such control period; and

\* \* \* \* \*

(2) While a stay under paragraph (b)(2)(iii)(D)(2) or (5) of this section is in effect for the sources in a State and Indian country located within the borders of such State with regard to emissions occurring in a control period in a given year—

\* \* \* \* \*

(iii) \* \* \*

(D) \* \* \*

(4) The effectiveness of paragraph (b)(2)(iii)(A) of this section is stayed for sources in Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia and Indian country located within the borders of such States with regard to emissions occurring in 2024 and thereafter. While a stay under this paragraph (b)(2)(iii)(D)(4) is in effect for a State,

such State shall be deemed not to be listed in paragraph (b)(2)(iii)(A) of this section for purposes of part 97 of this chapter for a control period after 2023.

(5) The effectiveness of paragraph (b)(2)(iii)(B) of this section is stayed for sources in Wisconsin and Indian country located within the borders of such State with regard to emissions occurring in 2024 and thereafter. While a stay under this paragraph (b)(2)(iii)(D)(5) is in effect for a State, such State shall be deemed not to be listed in paragraph (b)(2)(iii)(B) of this section for purposes of part 97 of this chapter for a control period after 2023.

\* \* \* \* \*

(14) \* \* \*

(iii) Notwithstanding any discontinuation pursuant to paragraph (b)(2) or (b)(13)(i) of this section of the applicability of subpart BBBB, EEEEE, or GGGGG of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State's SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances, and CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(A) The provisions of §§ 97.526(c), 97.826(c), and 97.1026(c) of this chapter (concerning the transfer of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, CSAPR NO<sub>x</sub> Ozone Season Group

2 allowances, and CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances between certain Allowance Management System accounts under common control);

(B) The provisions of §§ 97.526(d), 97.826(d) and (e), and 97.1026(e) of this chapter (concerning the conversion of allowances of one type into allowances of another type, in the same or different quantities and issued for the same or different control periods, including conversions among CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances, CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances, and CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances); and

(C) The provisions of §§ 97.811(d) and (e) and 97.1011(d) of this chapter (concerning the recall of certain CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances and CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances).

\* \* \* \* \*

(16) \* \* \*

(ii)(A) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(ii)(B) of this section and any control period that begins after December 31, 2020, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section, except as otherwise provided in paragraph (b)(2)(ii)(D)(1) or (b)(14)(iii) of this section.

(B) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(ii)(C) of this section and any control

period that begins after December 31, 2022, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter or in any emissions trading program provisions in a State’s SIP approved under paragraph (b)(8) or (9) of this section, except as otherwise provided in paragraph (b)(2)(ii)(D)(2) or (b)(14)(iii) of this section.

\* \* \* \* \*

3. Amend § 52.40 by revising and republishing paragraph (c)(4) to read as follows:

**§ 52.40 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from sources not subject to the CSAPR ozone season trading program?**

\* \* \* \* \*

(c) \* \* \*

(4) Notwithstanding any other provision of this part, the effectiveness of paragraphs (a) and (b), (c)(1) through (3), and (d) through (g) of this section and §§ 52.41, 52.42, 52.43, 52.44, 52.45, and 52.46 is stayed for sources located in Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia, including Indian country located within the borders of such States.

\* \* \* \* \*

## **Subpart F—California**

4. Amend § 52.284 by redesignating the introductory paragraph as paragraph (a) and adding paragraph (b) to read as follows:

**§ 52.284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) Notwithstanding any other provision of this part, the effectiveness of paragraph (a) of this section is stayed.

**Subpart O—Illinois**

5. Amend § 52.731 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

**§ 52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

## **Subpart P—Indiana**

6. Amend § 52.789 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

### **§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

## **Subpart V—Maryland**

7. Amend § 52.1084 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

**§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

**Subpart X—Michigan**

8. Amend § 52.1186 by:

- a. Adding paragraph (e)(6); and
- b. Redesignating paragraph (f) as paragraph (f)(1) and adding paragraph (f)(2).

The additions read as follows:

**§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(e) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (e)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that



while such stay remains in effect, the provisions of paragraph (e)(2) of this section shall apply with regard to such emissions.

(f) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (f)(1) of this section is stayed.

#### **Subpart FF—New Jersey**

9. Amend § 52.1584 by:

- a. Adding paragraph (e)(6); and
- b. Redesignating paragraph (f) as paragraph (f)(1) and adding paragraph (f)(2).

The additions read as follows:

#### **§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(e) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (e)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (e)(2) of this section shall apply with regard to such emissions.

(f) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (f)(1) of this section is stayed.

## **Subpart HH—New York**

10. Amend § 52.1684 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

### **§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

## **Subpart KK—Ohio**

11. Amend § 52.1882 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

**§ 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

**Subpart NN—Pennsylvania**

12. Amend § 52.2040 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

**§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that

while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

#### **Subpart VV—Virginia**

13. Amend § 52.2440 by:

- a. Adding paragraph (b)(6); and
- b. Redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2).

The additions read as follows:

#### **§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (b)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (b)(2) of this section shall apply with regard to such emissions.

(c) \* \* \*

(2) Notwithstanding any other provision of this part, the effectiveness of paragraph (c)(1) of this section is stayed.

## **Subpart YY—Wisconsin**

14. Amend § 52.2587 by adding paragraph (e)(6) to read as follows:

**§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(e) \* \* \*

(6) Notwithstanding any other provision of this part, the effectiveness of paragraph (e)(3) of this section is stayed with regard to emissions occurring in 2024 and thereafter, provided that while such stay remains in effect, the provisions of paragraph (e)(2) of this section shall apply with regard to such emissions.

## **PART 97—FEDERAL NO<sub>x</sub> BUDGET TRADING PROGRAM, CAIR NO<sub>x</sub> AND SO<sub>2</sub> TRADING PROGRAMS, CSAPR NO<sub>x</sub> AND SO<sub>2</sub> TRADING PROGRAMS, AND TEXAS SO<sub>2</sub> TRADING PROGRAM**

15. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

## **Subpart BBBB—CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program**

16. Amend § 97.502 by revising and republishing the definitions “CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance”, “CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance”, and “CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance” to read as follows:

### **§ 97.502 Definitions.**

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance* means a CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocated for a control period after 2022 under subpart EEEEE of this part or § 97.1026(e)(1)(ii) or (e)(2)(ii) to a unit in a State listed in § 52.38(b)(2)(ii)(D)(I) of this chapter (and Indian country within the borders of such a State) or allocated or auctioned for a control period after 2022 in accordance with the provisions of a SIP revision approved after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** for such a State by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part, § 97.526, or § 97.1026, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, to emit one ton of NO<sub>x</sub> during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, where each CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance is either a CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance or a CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part or § 97.826, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton or less of NO<sub>x</sub> during a control

period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program.

\* \* \* \* \*

17. Amend § 97.526 by:

- a. Removing and reserving paragraph (d)(2);
- b. Revising and republishing paragraphs (e)(1) through (3); and
- c. Adding paragraphs (e)(4) through (6).

The revisions, republications, and additions read as follows:

**§ 97.526 Banking and conversion.**

\* \* \* \* \*

(e) \* \* \*

(1) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(i)(B) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for the control period in 2017 (or any later control period for which the allowance transfer deadline defined in § 97.802 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

(2)(i) Except as provided in paragraph (e)(2)(ii) of this section, after the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(d)(1) and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(ii)(B) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(d)(1)(i)(D).

(ii) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and §§ 97.826(d)(1) and 97.1026(e)(1) and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(iii)(D)(I) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.802 has passed)



computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(d)(1)(i)(D).

(3) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(e)(1) and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(ii)(C) of this chapter and not listed in § 52.38(b)(2)(iii)(D)(2) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(e)(1)(ii).

(4) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program for the control period in the current year and required to demonstrate compliance under such program for such control period by holding CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub>

Ozone Season Group 1 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.502 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for the control period in the current year.

(5) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program for the control period in the current year and required to demonstrate compliance under such program for such control period by holding CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.502 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in the current year.

(6) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program for the control period in the current year may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.502 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in the current year.

#### **Subpart EEEEE—CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program**

18. Amend § 97.802 by revising and republishing the definitions “Allocate or allocation” introductory text, “Common designated representative’s assurance level” paragraph (2), “CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance”, “CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance”, and “CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance” to read as follows:

**§ 97.802 Definitions.**

\* \* \* \* \*

*Allocate or allocation* means, with regard to CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, §§ 97.526 and 97.1026, and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, of the amount of such CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances to be initially credited, at no cost to the recipient, to:

\* \* \* \* \*

*Common designated representative’s assurance level* \* \* \*

(2) Provided that the allocations of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances allocated for such control period under § 97.526 or § 97.1026.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance* means a CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocated for a control period after 2022 under this subpart or § 97.1026(e)(1)(ii) or (e)(2)(ii) to a unit in a State listed in § 52.38(b)(2)(ii)(D)(I) of this chapter

(and Indian country within the borders of such a State) or allocated or auctioned for a control period after 2022 in accordance with the provisions of a SIP revision approved after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** for such a State by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter.

*CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, § 97.526, or § 97.1026, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, to emit one ton of NO<sub>x</sub> during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, where each CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance is either a CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance or a CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part or § 97.826, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton or less of NO<sub>x</sub> during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program.

\* \* \* \* \*

19. Amend § 97.806 by revising and republishing paragraph (c)(4)(iv) to read as follows:

**§ 97.806 Standard requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iv) A CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance held for compliance with the requirements under paragraphs (c)(1)(i), (c)(1)(ii)(A), and (c)(2)(i) through (iii) of this section for a source or group of sources in a State listed in § 52.38(b)(2)(ii)(D)(I) of this chapter (and Indian country within the borders of such a State) for a control period after 2022 must be a CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance.

\* \* \* \* \*

20. Amend § 97.810 by:

a. Adding paragraphs (a)(4)(iv) through (vi), (a)(5)(iv) through (vi), (a)(10)(iv) through (vi), (a)(11)(iv) through (vi), (a)(14)(iv) through (vi), (a)(15)(iv) through (vi), (a)(16)(iv) through (vi), (a)(18)(iv) through (vi), and (a)(21)(iv) through (vi); and

b. Revising and republishing paragraphs (a)(23) and (b)(4), (5), (10), (11), (14), (15), (16), (18), (21), and (23).

The additions, revisions, and republications read as follows:

**§ 97.810 State NO<sub>x</sub> Ozone Season Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.**

(a) \* \* \*

(4) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 8,059 tons.

(v) The new unit set-aside for 2024 and thereafter is 244 tons.

(vi) [Reserved]

(5) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 9,564 tons.

(v) The new unit set-aside for 2024 and thereafter is 190 tons.

(vi) [Reserved]

\* \* \* \* \*

(10) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 1,348 tons.

(v) The new unit set-aside for 2024 and thereafter is 122 tons.

(vi) [Reserved]

(11) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 9,786 tons.

(v) The new unit set-aside for 2024 and thereafter is 382 tons.

(vi) The Indian country new unit set-aside for 2024 and thereafter is 10 tons.

\* \* \* \* \*

(14) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 1,253 tons.

(v) The new unit set-aside for 2024 and thereafter is 27 tons.

(vi) [Reserved]

(15) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 3,403 tons.

(v) The new unit set-aside for 2024 and thereafter is 167 tons.

(vi) The Indian country new unit set-aside for 2024 and thereafter is 3 tons.

(16) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 9,773 tons.

(v) The new unit set-aside for 2024 and thereafter is 290 tons.

(vi) [Reserved]

\* \* \* \* \*

(18) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 8,373 tons.

(v) The new unit set-aside for 2024 and thereafter is 339 tons.

(vi) [Reserved]

\* \* \* \* \*

(21) \* \* \*

(iv) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2024 and thereafter is 3,663 tons.

(v) The new unit set-aside for 2024 and thereafter is 150 tons.

(vi) [Reserved]

\* \* \* \* \*

(23) *Wisconsin*. (i) The NO<sub>x</sub> Ozone Season Group 2 trading budget for 2017 through 2022 and for 2024 and thereafter is 7,915 tons.

(ii) The new unit set-aside for 2017 through 2022 and for 2024 and thereafter is 151 tons.

(iii) The Indian country new unit set-aside for 2017 through 2022 and for 2024 and thereafter is 8 tons.

(b) \* \* \*

(4)(i) The variability limit for Illinois for 2017 through 2020 is 3,066 tons.

(ii) The variability limit for Illinois for 2024 and thereafter is 1,692 tons.

(5)(i) The variability limit for Indiana for 2017 through 2020 is 4,894 tons.

(ii) The variability limit for Indiana for 2024 and thereafter is 2,008 tons.

\* \* \* \* \*

(10)(i) The variability limit for Maryland for 2017 through 2020 is 804 tons.

(ii) The variability limit for Maryland for 2024 and thereafter is 283 tons.

(11)(i) The variability limit for Michigan for 2017 through 2020 is 3,575 tons.

(ii) The variability limit for Michigan for 2024 and thereafter is 2,055 tons.

\* \* \* \* \*

(14)(i) The variability limit for New Jersey for 2017 through 2020 is 433 tons.

(ii) The variability limit for New Jersey for 2024 and thereafter is 263 tons.

(15)(i) The variability limit for New York for 2017 through 2020 is 1,078 tons.

(ii) The variability limit for New York for 2024 and thereafter is 715 tons.

(16)(i) The variability limit for Ohio for 2017 through 2020 is 4,100 tons.

(ii) The variability limit for Ohio for 2024 and thereafter is 2,052 tons.

\* \* \* \* \*

(18)(i) The variability limit for Pennsylvania for 2017 through 2020 is 3,770 tons.

(ii) The variability limit for Pennsylvania for 2024 and thereafter is 1,758 tons.

\* \* \* \* \*



(21)(i) The variability limit for Virginia for 2017 through 2020 is 1,937 tons.

(ii) The variability limit for Virginia for 2024 and thereafter is 769 tons.

\* \* \* \* \*

(23) The variability limit for Wisconsin for 2017 through 2022 and for 2024 and thereafter is 1,662 tons.

\* \* \* \* \*

21. Amend § 97.811 by revising and republishing the heading in paragraph (d), paragraph (d)(1), the heading in paragraph (e), and paragraph (e)(1) to read as follows:

**§ 97.811 Timing requirements for CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocations.**

\* \* \* \* \*

(d) *Recall of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances allocated for control periods in 2021 through 2024.* (1) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, the provisions of this paragraph and paragraphs (d)(2) through (7) of this section shall apply with regard to each CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance that was allocated for a control period in 2021 through 2024 to any unit (including a permanently retired unit qualifying for an exemption under § 97.805) in a State listed in § 52.38(b)(2)(ii)(B) of this chapter (and Indian country within the borders of such a State) and that was initially recorded under § 97.821(d) or (e)(1) in the compliance account for the source that includes the unit, whether such CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance was allocated pursuant to this subpart or pursuant to a SIP revision approved under § 52.38(b) of this chapter and whether such CSAPR NO<sub>x</sub> Ozone

Season Original Group 2 allowance remains in such compliance account or has been transferred to another Allowance Management System account.

\* \* \* \* \*

(e) *Recall of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances allocated for control periods in 2023 and 2024.* (1) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, the provisions of this paragraph (e)(1) and paragraphs (e)(2) through (7) of this section shall apply with regard to each CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance that was allocated for a control period in 2023 or 2024 to any unit (including a permanently retired unit qualifying for an exemption under § 97.805) in a State listed in § 52.38(b)(2)(ii)(C) of this chapter and not listed in § 52.38(b)(2)(iii)(D)(2) of this chapter (and Indian country within the borders of such a State) and that was initially recorded under § 97.821(e)(1) in the compliance account for the source that includes the unit, whether such CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance was allocated pursuant to this subpart or pursuant to a SIP revision approved under § 52.38(b) of this chapter and whether such CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance remains in such compliance account or has been transferred to another Allowance Management System account.

\* \* \* \* \*

22. Amend § 97.821 by:

- a. Revising and republishing paragraph (e)(2);
- b. Adding paragraphs (e)(3) and (4); and
- c. Revising and republishing paragraph (f).

The revisions, republications, and additions read as follows:

**§ 97.821 Recordation of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocations and auction results.**

\* \* \* \* \*

(e) \* \* \*

(2) After the Administrator has carried out the procedures in § 97.811(d), for sources in a State listed in § 52.38(b)(2)(iii)(D)(1) of this chapter (and Indian country within the borders of such a State), by September 5, 2023, or, with regard to sources in West Virginia, as soon as practicable on or after September 29, 2023, the Administrator will record in each CSAPR NO<sub>x</sub> Ozone Season Group 2 source's compliance account the CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances allocated to the CSAPR NO<sub>x</sub> Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control periods in 2023 and 2024.

(3) After the Administrator has carried out the procedures in § 97.811(d), for sources in a State listed in § 52.38(b)(2)(iii)(D)(4) of this chapter (and Indian country within the borders of such a State), as soon as practicable on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the Administrator will record in each CSAPR NO<sub>x</sub> Ozone Season Group 2 source's compliance account the CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances allocated to the CSAPR NO<sub>x</sub> Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2024, with the following adjustments:

(i) The quantity of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances recorded in the compliance account for Gilbert Generating Station (plant ID 2393) will be the quantity allocated in accordance with § 97.811(a) minus 3.

(ii) The quantity of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances recorded in the compliance account for Warren (plant ID 3132) will be the quantity allocated in accordance with § 97.811(a) plus 3.

(iii) The quantity of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances recorded in the compliance account for Baldwin Energy Complex (plant ID 889) will be the quantity allocated in accordance with § 97.811(a) minus 50.

(iv) The quantity of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances recorded in the compliance account for Midland Cogeneration Venture (plant ID 10745) will be the quantity allocated in accordance with § 97.811(a) plus 50.

(v) The quantity of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances recorded in the compliance account for PEI Power Corporation (plant ID 50279) will be the quantity allocated in accordance with § 97.811(a) minus 8.

(4) After the Administrator has carried out the procedures in § 97.811(e), for sources in a State listed in § 52.38(b)(2)(iii)(D)(5) of this chapter (and Indian country within the borders of such a State), as soon as practicable on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the Administrator will record in each CSAPR NO<sub>x</sub> Ozone Season Group 2 source's compliance account the CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances allocated to the CSAPR NO<sub>x</sub> Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2024.

(f) By July 1, 2024, or, for sources in a State listed in § 52.38(b)(2)(iii)(D)(4) or (5) of this chapter (and Indian country within the borders of such a State), as soon as practicable on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and by July 1 of each year thereafter, the Administrator will record in each CSAPR NO<sub>x</sub> Ozone Season Group 2 source's compliance account the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances allocated to the CSAPR NO<sub>x</sub> Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances auctioned to CSAPR NO<sub>x</sub> Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control period in the year after the year of the applicable recordation deadline under this paragraph.

\* \* \* \* \*

23. Amend § 97.824 by revising and republishing paragraph (c)(2)(ii) to read as follows:

**§ 97.824 Compliance with CSAPR NO<sub>x</sub> Ozone Season Group 2 emissions limitation.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) Any other CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to § 97.526 or § 97.1026, in the order of recordation.

\* \* \* \* \*

24. Amend § 97.826 by:

- a. Revising and republishing paragraph (b);
- b. Removing and reserving paragraph (d)(3);
- c. Revising and republishing paragraphs (e)(1) introductory text and (e)(1)(ii)(B);
- d. Removing and reserving paragraph (e)(2); and
- e. Revising and republishing paragraph (f).

The revisions and republications read as follows:

**§ 97.826 Banking and conversion.**

\* \* \* \*

(b) Any CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance is deducted or transferred under § 97.811(c), (d), or (e), § 97.823, § 97.824, § 97.825, § 97.827, or § 97.828, or paragraph (c), (d), or (e) of this section.

\* \* \* \*

(e) \* \* \*

(1) By September 18, 2023, the Administrator will temporarily suspend acceptance of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR NO<sub>x</sub> Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(A) or (b)(2)(iii)(D)(1) through (3) of this chapter (and Indian country within the borders of such a State):

\* \* \* \*

(ii) \* \* \*

(B) The product of the sum of the trading budgets for the control period in 2024 under § 97.1010(a)(1)(i) for all States listed in § 52.38(b)(2)(iii)(B) and (C) of this chapter and not listed in § 52.38(b)(2)(iii)(D)(2) or (3) of this chapter multiplied by 0.21 and further multiplied by a fraction whose numerator is the number of days from August 4, 2023 through September 30, 2023, inclusive, and whose denominator is 153.

\* \* \* \* \*

(f) Notwithstanding any other provision of this subpart or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter, CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances or CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances under this subpart and CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances under this subpart as follows, provided that nothing in this paragraph (f) alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(1)(i) Except as provided in paragraph (f)(1)(ii) of this section, after the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(B) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for a control period in 2017 through 2020 by holding instead, in a general account established for this sole purpose,

an amount of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(ii) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.1026(e)(1) and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(iii)(D)(1) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for a control period in 2017 through 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.802 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(2) After the Administrator has carried out the procedures set forth in paragraph (e)(1) of this section and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(C) of this chapter and not listed in § 52.38(b)(iii)(D)(2) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given



number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for a control period in 2017 through 2022 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances divided by the conversion factor determined under paragraph (e)(1)(ii) of this section.

(3) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program for the control period in the current year and required to demonstrate compliance under such program for such control period by holding CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.802 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in the current year.

(4) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program for the control period in the current year may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.802 has

passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in the current year.

(5) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program for the control period in the current year may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.802 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in the current year.

25. Amend § 97.830 by revising and republishing paragraph (b)(1) to read as follows:

**§ 97.830 General monitoring, recordkeeping, and reporting requirements.**

\* \* \* \* \*

(b) \* \* \*

(1)(i) May 1, 2017, for a unit other than a unit described in paragraph (b)(1)(ii) or (iii) of this section;

(ii) May 1, 2023, for a unit in a State listed in § 52.38(b)(2)(iii)(D)(1) of this chapter (and Indian country within the borders of such a State) that did not commence commercial operation at least 180 calendar days before September 30, 2020;

(iii) May 1, 2024, for a unit in a State listed in § 52.38(b)(2)(iii)(D)(4) of this chapter (and Indian country within the borders of such a State) that did not commence commercial operation at least 180 calendar days before September 30, 2020, or a unit in a State listed in § 52.38(b)(2)(iii)(D)(5) of this chapter (and Indian country within the borders of such a State)

that did not commence commercial operation at least 180 calendar days before September 30, 2022;

\* \* \* \* \*

26. Amend § 97.834 by revising and republishing paragraph (d)(2)(i) to read as follows:

**§ 97.834 Recordkeeping and reporting.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i)(A) The calendar quarter covering May 1, 2017, through June 30, 2017, for a unit other than a unit described in paragraph (d)(2)(i)(B) or (C) of this section;

(B) The calendar quarter covering May 1, 2023, through June 30, 2023, for a unit in a State listed in § 52.38(b)(2)(iii)(D)(1) of this chapter (and Indian country within the borders of such a State) that did not commence commercial operation at least 180 calendar days before September 30, 2020;

(C) The calendar quarter covering May 1, 2024, through June 30, 2024, for a unit in a State listed in § 52.38(b)(2)(iii)(D)(4) of this chapter (and Indian country within the borders of such a State) that did not commence commercial operation at least 180 calendar days before September 30, 2020, or a unit in a State listed in § 52.38(b)(2)(iii)(D)(5) of this chapter (and Indian country within the borders of such a State) that did not commence commercial operation at least 180 calendar days before September 30, 2022;

**Subpart GGGGG—CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program**

27. Amend § 97.1002 by revising and republishing the definitions “Allocate or allocation” introductory text, “Common designated representative’s assurance level” paragraph (2), “CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance”, “CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance”, and “CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance” to read as follows:

**§ 97.1002 Definitions.**

\* \* \* \* \*

*Allocate or allocation* means, with regard to CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.826, and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, of the amount of such CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

\* \* \* \* \*

*Common designated representative’s assurance level* \* \* \*

(2) Provided that the allocations of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances allocated for such control period under § 97.826.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance* means a CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocated for a control period after 2022 under subpart EEEEE of this part or § 97.1026(e)(1)(ii) or (e)(2)(ii) to a unit in a State listed in § 52.38(b)(2)(ii)(D)(I) of this chapter (and Indian country within the borders of such a State) or allocated or auctioned for a control period after 2022 in accordance with the provisions of a SIP revision approved after

**[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** for such a State by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part, § 97.526, or § 97.1026, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, to emit one ton of NO<sub>x</sub> during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, where each CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance is either a CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance or a CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance.

\* \* \* \* \*

*CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart or § 97.826, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton or less of NO<sub>x</sub> during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program.

\* \* \* \* \*

28. Amend § 97.1011 by adding paragraph (d) to read as follows:

**§ 97.1011 CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance allocations to existing units.**

\* \* \* \* \*

(d) *Recall of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances allocated for the control period in 2024.* As soon as practicable on or after **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the Administrator will deduct from every general account and compliance account all CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances allocated for the control period in 2024 and will record the deductions in each such account.

29. Amend § 97.1024 by revising and republishing paragraph (c)(2)(ii) to read as follows:

**§ 97.1024 Compliance with CSAPR NO<sub>x</sub> Ozone Season Group 3 primary emissions limitation; backstop daily NO<sub>x</sub> emissions rate.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) Any other CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to § 97.826, in the order of recordation.

\* \* \* \* \*

30. Amend § 97.1026 by revising and republishing paragraphs (b), (e), and (f) to read as follows:

**§ 97.1026 Banking and conversion; bank recalibration.**

\* \* \* \* \*

(b) Any CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO<sub>x</sub> Ozone Season

Group 3 allowance is deducted or transferred under § 97.1011(c) or (d), § 97.1012(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028, or paragraph (c), (d), or (e) of this section.

\* \* \* \* \*

(e)(1) Notwithstanding any other provision of this subpart, by September 18, 2023, or, with regard to sources in West Virginia, as soon as practicable on or after September 29, 2023, the Administrator will temporarily suspend acceptance of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance transfers submitted under § 97.1022 and, before resuming acceptance of such transfers, will take the actions in paragraphs (e)(1)(i) and (ii) of this section with regard to every compliance account for a CSAPR NO<sub>x</sub> Ozone Season Group 3 source in a State listed in § 52.38(b)(2)(iii)(D)(I) of this chapter (and Indian country within the borders of such a State):

(i) The Administrator will deduct all CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances allocated for the control periods in 2021 and 2022 from each such compliance account.

(ii) For each CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance deducted from a given source's compliance account under paragraph (e)(1)(i) of this section, the Administrator will allocate to the source and record in the source's compliance account one CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance for the control period in 2023.

(2) Notwithstanding any other provision of this subpart, as soon as practicable on or after **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the Administrator will temporarily suspend acceptance of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance transfers submitted under § 97.1022 and, before resuming acceptance of such transfers, will take the actions in paragraphs (e)(2)(i) through (iii) of this section with

regard to every compliance account for a source in a state listed in § 52.38(b)(2)(iii)(D)(4) or (5) of this chapter (and Indian country within the borders of such a State):

(i) The Administrator will deduct all CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances allocated for the control periods in 2021 through 2023 from each such compliance account.

(ii) For each CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance deducted from the compliance account for a source in a State listed in § 52.38(b)(2)(iii)(D)(4) of this chapter (and Indian country within the borders of such a State) under paragraph (e)(2)(i) of this section, the Administrator will allocate and record in the account one CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowance for the control period in 2024.

(iii) For each CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance deducted from the compliance account for a source in a State listed in § 52.38(b)(2)(iii)(D)(5) of this chapter (and Indian country within the borders of such a State) under paragraph (e)(2)(i) of this section, the Administrator will allocate and record in the account one CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowance for the control period in 2024.

(f) Notwithstanding any other provision of this subpart, CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances or CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances may be used to satisfy requirements to hold CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances under this subpart as follows, provided that nothing in this paragraph (f) alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(1) After the Administrator has carried out the procedures set forth in paragraph (e)(1) of this section and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**,



the owner or operator of a CSAPR NO<sub>x</sub> Ozone Season Group 3 source in a State listed in § 52.38(b)(2)(iii)(D)(1) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in 2021 or 2022 by holding instead, in a general account established for this sole purpose, an equal amount of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.802 has passed).

(2) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program for the control period in the current year and required to demonstrate compliance under such program for such control period by holding CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in a previous year for which the allowance transfer deadline defined in § 97.1002 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Original Group 2 allowances for the control period in the current year.

(3) On or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the owner or operator of a source subject to the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program for the control period in the current year and required to demonstrate compliance under such program for such control period by holding CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances may satisfy a requirement to hold a given number of CSAPR NO<sub>x</sub> Ozone Season Group 3 allowances for the control period in a previous year for which the

allowance transfer deadline defined in § 97.1002 has passed by holding instead in the source's compliance account an equal number of CSAPR NO<sub>x</sub> Ozone Season Expanded Group 2 allowances for the control period in the current year.