



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2019-0337; FRL-10000-20-Region 7]**

**Air Plan Approval; Missouri; Revisions to Cross-State Air Pollution Rule Annual Trading Program and Rescission of Clean Air Interstate Rule**

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted on January 15, 2019, and two revisions submitted on March 7, 2019, by the State of Missouri. The January 15, 2019, revision requests EPA remove from the Missouri SIP the regulations that established state trading programs under the Clean Air Interstate Rule (CAIR). The EPA is only finalizing the removal of the CAIR annual nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) trading program rules. The EPA will act on the revisions to the State's CAIR seasonal NO<sub>x</sub> trading program in a separate action. The March 7, 2019, submissions request EPA approve into the SIP Missouri's Cross-State Air Pollution Rule (CSAPR) state trading program rules for SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub>. This approval automatically terminates Missouri EGUs' requirements to participate in the corresponding CSAPR Federal trading programs. Like the Federal trading programs

being replaced, the state trading programs approved in this SIP revision fully satisfy Missouri's good neighbor obligations with respect to the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS) and the 1997 ozone NAAQS and at least partially satisfy the State's good neighbor obligations with respect to the 2008 ozone NAAQS. This revision will not have an adverse effect on air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA) and the regulations governing approval of CSAPR SIPs.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0337. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7214; email address kemp.lachala@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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### **I. Background**

Starting January 1, 2015, large electricity generating units (EGUs) in Missouri were required under a Federal Implementation Plan (FIP) to participate in CSAPR Federal trading programs for SO<sub>2</sub> and annual NO<sub>x</sub> emissions to address Missouri's obligations under CAA section 110(a)(2)(D)(i)(I) (the good neighbor provision) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS. At the same time, the EPA stopped administering Missouri's previous CAIR state trading programs for SO<sub>2</sub> and annual NO<sub>x</sub>. See 76 FR 48208 (August 8, 2011).

The CSAPR regulations at 40 CFR 52.38 and 52.39 allow states to adopt either "abbreviated" CSAPR SIP revisions that modify emission allowance allocations but leave the CSAPR FIPs in place or "full" CSAPR SIP revisions that contain complete CSAPR state trading program rules. Approval of a full CSAPR SIP revision (but not an abbreviated CSAPR SIP revision) results in automatic withdrawal of the corresponding CSAPR FIP requirements and satisfies the State's good neighbor obligations to the same extent as the FIP requirements being replaced. *See, e.g.,* 40 CFR 52.38(b)(10)(i). On June 28, 2016, the EPA approved an abbreviated CSAPR SIP revision for Missouri adopting State-determined allocation methodologies for emission allowances under the CSAPR Federal SO<sub>2</sub> and annual NO<sub>x</sub> trading programs but otherwise leaving the Federal trading programs in place. *See* 81 FR 41838 (June 28, 2016).

Starting May 1, 2017, pursuant to a FIP issued under the CSAPR Update, large EGUs in Missouri were required to participate in a new CSAPR Federal trading program for ozone season NO<sub>x</sub> emissions to at least partially address Missouri's good neighbor obligation with respect to the 2008 ozone NAAQS. These FIP requirements also fully addressed Missouri's good

neighbor obligation with respect to the 1997 ozone NAAQS that had previously been partially addressed by the EGUs' participation in an earlier CSAPR Federal trading program. See 81 FR 74504 (October 26, 2016).<sup>1</sup>

On July 30, 2019, the EPA proposed approval of revisions to the Missouri SIP in the **Federal Register** to remove from the SIP the State's CAIR trading program rules for SO<sub>2</sub> and annual NO<sub>x</sub>. The EPA did not propose action on the State's request to also remove from the SIP the State's CAIR trading program rule for ozone season NO<sub>x</sub>. In the same **Federal Register** document, EPA also proposed to approve Missouri's full CSAPR SIP revision adopting complete CSAPR state trading program rules for SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> to replace the CSAPR Federal trading program rules. See 84 FR 36859. The EPA solicited comments on the proposed revision to Missouri's SIP, and received no comments.

## **II. What is Being Addressed in this Document?**

The EPA is approving a revision to Missouri's SIP by approving the State's request to remove 10 CSR 10-6.362 Clean Air Interstate Rule Annual NO<sub>x</sub> Trading Program and 10 CSR 10-

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<sup>1</sup> In September 2019, the U.S. Court of Appeals for the D.C. Circuit issued an opinion remanding the CSAPR Update to the EPA to address the court's holding that the rule unlawfully allows upwind states' significant contributions to air quality problems in downwind areas to continue past the downwind areas' attainment deadlines. *Wisconsin v. EPA*, 983 F.3d 303 (D.C. Cir. 2019). Relatedly, in October 2019, the D.C. Circuit issued a judgment vacating a December 2018 EPA determination that compliance with the CSAPR Update's emissions reduction requirements fully, rather than partially, satisfied good neighbor obligations with respect to the 2008 ozone NAAQS for 20 states, including Missouri. *New York v. EPA*, No. 19-1019, 2019 WL 5394069 (D.C. Cir. October 1, 2019). However, neither of these court actions invalidated the EPA's conclusions in the CSAPR Update that compliance with the rule's emissions reduction requirements fully addresses Missouri's good neighbor obligations with respect to the 1997 ozone NAAQS and at least partially addresses the state's good neighbor obligations with respect to the 2008 ozone NAAQS.

6.366 Clean Air Interstate Rule Annual SO<sub>2</sub> Trading Program, which implemented the State's CAIR annual NO<sub>x</sub> and SO<sub>2</sub> trading programs. The EPA is also finalizing approval of Missouri's revisions to 10 CSR 10-6.372 Cross-State Air Pollution Rule NO<sub>x</sub> Annual Trading Program and 10 CSR 10-6.376 Cross-State Air Pollution Rule SO<sub>2</sub> Group 1 Trading Program that add to the State's previously approved allocation provisions all the other provisions necessary for complete state trading programs. Finally, the EPA is also finalizing approval of Missouri's addition of 10 CSR 10-6.374 Cross-State Air Pollution Rule NO<sub>x</sub> Ozone Season Group 2 Trading Program.

A discussion of the CSAPR regulations at 40 CFR 52.38 and 52.39 governing full and abbreviated CSAPR SIP revisions can be found in the EPA's June 28, 2016 approval of Missouri's previous abbreviated CSAPR SIP revision for SO<sub>2</sub> and annual NO<sub>x</sub>. See 81 FR 41838. A detailed discussion of Missouri's current SIP revision was provided in the EPA's July 30, 2019, proposed rule. See 84 FR 36859.

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The State's SIP revision meets the requirements for approval of full CSAPR SIPs under 40 CFR 52.38 and 52.39. Missouri's CSAPR state trading program rules incorporate by reference the corresponding provisions of the CSAPR Federal

trading program rules at 40 CFR part 97, subparts AAAAA, CCCCC, and EEEEE, with two exceptions. First, the State has retained the allocation provisions for SO<sub>2</sub> and annual NO<sub>x</sub> allowances from the State's previous abbreviated CSAPR SIP instead of adopting the default Federal allocation provisions for those allowances. Second, consistent with the CSAPR SIP approval criteria, the State's rules do not incorporate the Federal rule provisions governing allocation of allowances to new units in Indian country. Missouri's CSAPR state trading program rules are complete, and the State has not adopted any other substantive changes to the CSAPR Federal trading program regulations.

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the March 7, 2019, SIP revisions from August 24, 2018 to October 4, 2018 and received seven comments from the EPA during the Regulatory Impact Review. The EPA's comments are in the docket for this action. Missouri amended the rule in response to the comments and the EPA did not comment further. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **IV. What Action is the EPA Taking?**

We are taking final action to approve the removal of 10 CSR 10-6.362 Clean Air Interstate Rule Annual NO<sub>x</sub> Trading Program and 10 CSR 10-6.366 Clean Air Interstate Rule Annual SO<sub>2</sub> Trading Program from the SIP. The EPA is also taking final action to approve into the SIP the revisions to 10 CSR 10-6.372 CSAPR NO<sub>x</sub> Annual Trading Program and 10 CSR 10-6.376 CSAPR SO<sub>2</sub> Group 1 Trading Program and the addition of 10 CSR 10-6.374 CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program. As a result of this approval, the FIP requirements for Missouri EGUs to participate in the corresponding CSAPR Federal trading programs are automatically terminated. Approval of this SIP revision fully satisfies Missouri's good neighbor obligations with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the 1997 ozone NAAQS and at least partially satisfies Missouri's good neighbor obligations with respect to the 2008 ozone NAAQS.

#### **V. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the FOR FURTHER

INFORMATION CONTACT section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

Also, in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations and Statutes from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 26, 2019.

James Gulliford,  
Regional Administrator,  
Region 7.

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

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

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

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

**Subpart A--General Provisions**

**§52.38 [Amended]**

2. Section 52.38 is amended by:

a. In paragraph (a)(8)(iii), adding the word "Missouri," after the word "Indiana,"; and

b. In paragraph (b)(13)(iv), removing the words "Alabama and Indiana" and adding in its place the words "Alabama, Indiana, and Missouri".

**§52.39 [Amended]**

3. Section 52.39 is amended in paragraph (1)(3) by removing the word "Indiana" and adding in its place the words "Indiana and Missouri".

**Subpart AA--Missouri**

4. In §52.1320, the table in paragraph (c) is amended by:

a. Removing entries "10-6.362" and "10-6.366";

b. Revising the entry "10-6.372";

c. Adding entry "10-6.374" in numerical order; and

d. Revising the entry "10-6.376".

The revisions and addition read as follows:

**§52.1320 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Missouri Regulations**

<b>Missouri citation</b>	<b>Title</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>Missouri Department of Natural Resources</b>				
* * * * *				
<b>Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * * * *				
10-6.372	Cross-State Air Pollution Rule NO <sub>x</sub> Annual Trading Program	3/30/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
10-6.374	Cross-State Air Pollution Rule NO <sub>x</sub> Ozone Season Group 2 Trading Program	3/30/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
10-6.376	Cross-State Air Pollution Rule SO <sub>2</sub> Group 1 Trading Program	3/30/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2019-26102 Filed: 12/3/2019 8:45 am; Publication Date: 12/4/2019]