



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0634; FRL-10005-34-Region 5]

**Air Plan Approval; Indiana; Revisions to NO_x SIP Call and CAIR
Rules**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA) a request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) to incorporate the following: a new rule concerning nitrogen oxide (NO_x) emissions for the ozone season from Electric Generating Units (EGUs) and large non-EGUs; revisions concerning NO_x emission rate limits for specific source categories; the repeal of the NO_x Budget Trading Program; and the repeal of the Clean Air Interstate Rule (CAIR) NO_x ozone season trading program. This SIP revision will ensure continued compliance by EGUs and large non-EGUs with the requirements of the NO_x SIP Call.

DATES: This direct final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], unless EPA receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE *FEDERAL REGISTER*]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0634 at <http://www.regulations.gov> or via email to arra.sarah@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia

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

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

- I. What is the background of this SIP submission?
- II. What is EPA's analysis of this SIP submission?
- III. What action is EPA Taking?
- IV. Incorporation by Reference.
- V. Statutory and Executive Order Reviews.

I. What is the background of this SIP submission?

Under the "good neighbor provision" of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the National

Ambient Air Quality Standards (NAAQS), or interfere with maintenance of the NAAQS, in any other state.

On October 27, 1998, EPA published the NOx SIP Call, which required eastern states, including Indiana, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets (63 FR 57356). The NOx SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NOx emissions, one of the precursors of ozone. EPA developed the NOx Budget Trading Program, an allowance trading program that states could adopt to meet most of their obligations under the NOx SIP Call. This trading program allowed certain sources to participate in a regional cap and trade program: EGUs with capacity greater than 25 megawatts; and large non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units (MMBtu) per hour. The NOx SIP Call also identified potential reductions from Portland cement kilns and stationary internal combustion engines. To meet the requirements of the NOx SIP Call, IDEM initially promulgated two rules: 326 IAC 10-3, which established source-by-source emission rate limits and monitoring requirements for Portland cement kilns and blast furnace gas-fired boilers, and 326 IAC 10-4, which required EGUs and certain other non-EGUs in

the state to participate in the NOx Budget Trading Program. On November 8, 2001, EPA published an action approving into the SIP the original versions of 326 IAC 10-3 and 326 IAC 10-4 in fulfillment of the "Phase I" requirements of the NOx SIP Call (66 FR 56465). EPA has subsequently approved revised portions of these rules into the SIP. On December 11, 2003, EPA approved Indiana rule revisions that changed the regulatory approach selected by the state for blast furnace gas-fired boilers at two sources, making such units subject to the NOx Budget Trading Program at 326 IAC 10-4 instead of the source-by-source emission rate limits at 326 IAC 10-3 (68 FR 69025).¹ On October 1, 2007, EPA approved into the SIP 326 IAC 10-5, which addressed emissions from stationary internal combustion engines, as well as associated revisions to 326 IAC 10-3 and 326 IAC 10-4, in fulfillment of the "Phase II" requirements of the NOx SIP Call (72 FR 55664).

On May 12, 2005, EPA published CAIR, which required eastern states, including Indiana, to submit SIPs that prohibited emissions consistent with annual and ozone season NOx budgets and annual sulfur dioxide (SO₂) budgets (70 FR 25152). CAIR

¹ The units subject to the change were existing and new blast furnace gas-fired boilers at the ArcelorMittal Indiana Harbor East (plant code 10474) and US Steel Gary Works (plant code 50733) facilities. Blast furnace gas-fired boilers at other Indiana sources remained subject to 326 IAC 10-3 rather than 326 IAC 10-4.

addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM2.5) NAAQS and was designed to mitigate the impact of transported NOx emissions, a precursor of both ozone and PM2.5, as well as transported SO2 emissions, another precursor of PM2.5. Like the NOx SIP Call, CAIR also established several trading programs that states could use as mechanisms to comply with the budgets. When the CAIR trading program for ozone season NOx was implemented beginning in 2009, EPA discontinued administration of the NOx Budget Trading Program, but the requirements of the NOx SIP Call continued to apply. To meet the requirements of CAIR, IDEM promulgated 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3, which required EGUs to participate in the CAIR annual SO2 and annual and ozone season NOx trading programs. Participation by EGUs in the CAIR trading program for ozone season NOx emissions addressed the state's obligation under the NOx SIP Call for those units. IDEM also opted to incorporate large non-EGUs previously regulated under 326 IAC 10-4 into 326 IAC 24-3, to meet the obligations of the NOx SIP Call with respect to those units through the CAIR trading program as well. On October 22, 2007, EPA published an action approving portions of 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3 into the Indiana SIP (72 FR 59480). On November 29, 2010, EPA published an action approving additional sections of

and revisions to 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3 into the Indiana SIP, fully addressing the requirements of CAIR, along with associated revisions to 326 IAC 10-3 and 326 IAC 10-4 (75 FR 72956). The approved revision to 326 IAC 10-4 "sunsetting" all requirements for Indiana EGUs and large non-EGUs under the NOx Budget Trading Program in coordination with the implementation start date for the CAIR ozone season NOx trading program.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina v. EPA*, 531 F.3d 896, modified, 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NOx annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011, acting on the D.C. Circuit's remand, EPA published the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS (76 FR 48208). Through Federal Implementation Plans (FIPs), CSAPR required EGUs in eastern states, including Indiana, to meet annual and ozone season NOx budgets and annual SO₂ budgets implemented through new trading programs. CSAPR also contained

provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. Participation by a state's EGUs in the CSAPR trading program for ozone season NOx generally addressed the state's obligations under the NOx SIP Call for EGUs. However, CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NOx SIP Call for non-EGUs.

On October 26, 2016, EPA published the CSAPR Update, which established a new ozone season NOx trading program for EGUs in eastern states, including Indiana, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). As under CSAPR, participation by a state's EGUs in the new CSAPR trading program for ozone season NOx generally addressed the state's obligations under the NOx SIP Call for EGUs. The CSAPR Update also expanded options available to states for meeting NOx SIP Call requirements for large non-EGUs by allowing states to incorporate those units into the new trading program.

After evaluating the various options available following the CSAPR Update, IDEM chose to meet the ongoing NOx SIP Call

requirements for most existing and new large non-EGUs by adopting a new rule at 326 IAC 10-2 to make the portion of the state's NOx SIP Call budget assigned to those non-EGUs enforceable without an allowance trading mechanism. With respect to the blast furnace gas-fired units formerly regulated under the NOx Budget Trading Program (and then the CAIR ozone season NOx program), IDEM chose instead to revise 326 IAC 10-3 to make the units subject to source-by-source emission rate limits under that rule. Finally, IDEM also repealed its CAIR trading program rules at 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3 and its already-sunsetted NOx Budget Trading Program rule at 326 IAC 10-4. In its August 27, 2018 submission, IDEM requested that EPA approve these changes into the Indiana SIP.

On December 17, 2018, EPA approved a separate November 27, 2017 submission from IDEM, which modified the Indiana SIP to incorporate rules requiring EGUs to participate in the CSAPR trading programs pursuant to the SIP instead of the CSAPR FIPs (83 FR 64472). As part of this action, EPA approved the removal of 326 IAC 24-1, 326 IAC 24-2, and portions of 326 IAC 24-3 from the Indiana SIP. Following the December 17, 2018 SIP action, 326 IAC 24-3-1, 326 IAC 24-3-2, 326 IAC 24-3-4, and 326 IAC 24-3-11 are the only portions of Indiana's original CAIR rules at 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3 that remain in the

Indiana SIP. These provisions were left in place by the December 17, 2018 SIP action because they collectively establish ozone season NOx monitoring requirements for affected non-EGUs, and at the time of that action no other SIP-approved rules addressed monitoring requirements for these units for NOx SIP Call purposes.

On March 8, 2019, EPA finalized updates to the NOx SIP Call regulations to allow states to meet the NOx SIP Call's monitoring requirements using approaches other than the monitoring requirements under 40 CFR part 75 (84 FR 8422). Indiana's August 27, 2018 submission predates EPA's updates to the NOx SIP Call's monitoring requirements and therefore does not include changes that allow non-EGUs subject to the new rule at 326 IAC 10-2 to meet the NOx SIP Call's monitoring requirements using approaches other than part 75 monitoring. EPA is assisting IDEM with preparing a submission that would make other monitoring approaches available to these units and will address any such submission in a future rulemaking.

II. What is EPA's analysis of this SIP submission?

Indiana's August 27, 2018 submission requests that EPA update Indiana's SIP to reflect the addition of a new rule at 326 IAC 10-2, the revision of the existing rule at 326 IAC 10-3, and the repeal of the rules at 326 IAC 10-4, 326 IAC 24-1, 326

IAC 24-2, and 326 IAC 24-3. (As noted in section I, EPA has already approved the removal of 326 IAC 24-1, 326 IAC 24-2, and portions of 326 IAC 24-3 from the SIP in response to a different SIP submission.) Additionally, Indiana's submission includes a demonstration under section 110(1) of the CAA showing that this SIP revision does not interfere with any applicable CAA requirement.

A. New, revised, and repealed state rules

Given EPA's replacement of CAIR with CSAPR and EPA's previous discontinuation of administration of the NOx Budget Trading Program, Indiana has developed rule changes to address the NOx SIP Call's ongoing requirements with respect to existing and new large non-EGUs in a manner that does not rely on the administration of a trading program. Specifically, to address all of the affected non-EGUs formerly covered by the trading programs except the blast furnace gas-fired units, the state adopted a new rule at 326 IAC 10-2 that establishes monitoring requirements and a cap on the units' collective ozone season NOx mass emissions. To address the blast furnace gas-fired units, the state revised the existing rule at 326 IAC 10-3 to make the units subject to source-by-source emission rate limits and monitoring requirements under that rule. Indiana also repealed its remaining CAIR rules at 326 IAC 24-3-1, 326 IAC 24-3-2, 326

IAC 24-3-4, and 326 IAC 24-3-11 and its already-sunsetted NOx Budget Trading Program rule at 326 IAC 10-4. These rule changes have a state-effective date of August 26, 2018. Indiana's August 27, 2018, submission includes a request that EPA approve these rule changes into its SIP.

The new rule at 326 IAC 10-2 that Indiana has adopted to address the NOx SIP Call's ongoing requirements with respect to most of the state's affected large non-EGUs is structured into nine sections: 326 IAC 10-2-1 concerning applicability, 326 IAC 10-2-2 concerning definitions, 326 IAC 10-2-3 concerning monitoring requirements, 326 IAC 10-2-4 concerning compliance dates for monitoring, 326 IAC 10-2-5 concerning certification and recertification of monitoring systems, 326 IAC 10-2-6 concerning data substitution for periods of missing data, 326 IAC 10-2-7 concerning petitions for approval of monitoring alternatives, 326 IAC 10-2-8 concerning recordkeeping and reporting, and 326 IAC 10-2-9 concerning the ozone season NOx budget. Under the applicability provisions, the rule applies to all non-EGUs that would have been subject to the state's NOx Budget Trading Program rule at 326 IAC 10-4 except the blast furnace gas-fired units that will become subject to 326 IAC 10-3 as revised. The remaining provisions of the rule prohibit the affected non-EGUs' collective emissions from exceeding 8,008

tons, which is the portion of Indiana's statewide budget under the NOx SIP Call that was assigned to these types of units under the NOx Budget Trading Program, and require monitoring of ozone season NOx mass emissions in accordance with 40 CFR part 75. The rule also incorporates the provisions of 40 CFR part 72, subpart B, concerning designated representatives. In its SIP submittal, Indiana has committed to annually review the non-EGUs' compliance with the collective cap and, in the event of any cap exceedance, to revise its SIP within one year to compensate for the exceedance and prevent additional exceedances.

The revisions to the existing rule at 326 IAC 10-3 concerning NOx emission rate limits for specific source categories revise the rule's applicability provisions to cover the blast furnace gas-fired units that formerly would have been covered by the NOx Budget Trading Program.² In addition, the provisions concerning the establishment of appropriate emissions factors for use by such units in determining reported emissions under this rule are modified to allow historical emissions data

² The existing blast furnace gas-fired boilers that will be affected by this change are ArcelorMittal Indiana Harbor East (plant code 10474) units 501, 502, 503, and 504 and US Steel Gary Works (plant code 50733) units 701B1, 701B2, 701B3, 701B5, 701B6, 720B1, 720B2, and 720B3. According to IDEM, the other formerly affected blast furnace gas-fired boilers at the Indiana Harbor East facility have been retired.

reported under 40 CFR part 75 to be used for this purpose, and a provision is added requiring the newly covered units to submit their plans for complying with the rule within 60 days of becoming affected under the rule. The revisions will make these units subject to essentially the same emission rate limits and monitoring requirements that the units would have been subject to under the state rules originally adopted by Indiana to address the NOx SIP Call and approved into the SIP by EPA in 2001. Other revisions to the rule include removing references to the repealed NOx Budget Trading Program and CAIR rules, inserting references to the new rule at 326 IAC 10-2, updating the names of two sources referenced specifically by the rule, clarifying and strengthening applicability during certain operating periods, and making minor improvements to formatting and grammar.

The rules that Indiana requested be removed from the SIP in the August 27, 2018 SIP submission are the state's NOx Budget Trading Program rule at 326 IAC 10-4 and the state's CAIR trading program rules at 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3, concerning annual NOx, SO2, and ozone season NOx emissions, respectively. Because EPA's December 17, 2018 SIP action already approved the removal from the SIP of 326 IAC 24-1, 326 IAC 24-2, and portions of 326 IAC 24-3, this action will

remove only 326 IAC 10-4 and the remaining SIP-approved portions of 326 IAC 24-3, which were left in place by the December 17, 2018 SIP action to address ozone season NOx monitoring requirements for affected non-EGUs for NOx SIP Call purposes in the absence of other SIP-approved rules establishing such monitoring requirements.

B. EPA's evaluation of the SIP submission

Under the ongoing requirements of the NOx SIP Call, the Indiana SIP must, among other things: (1) include enforceable control measures for ozone season NOx mass emissions from existing and new large EGUs and large non-EGUs that the state relied on to achieve emission reductions to meet its statewide NOx budget and (2) require those sources to monitor and report their ozone season NOx emissions, which may be in accordance with part 75. See 40 CFR 51.121(f)(2) and (i). For the reasons discussed below, EPA is finding that Indiana's new rule at 326 IAC 10-2, in combination with the continued participation of the state's EGUs in the CSAPR ozone season NOx trading program, is sufficient to address the state's ongoing NOx SIP Call obligations with respect to these EGUs and large non-EGUs, while the revisions to 326 IAC 10-3 establish reasonable requirements for the blast furnace gas-fired units formerly subject to the

NOx Budget Trading Program. Accordingly, EPA is approving these changes into the SIP.

With respect to the NOx SIP Call requirement that the state have enforceable control measures to limit ozone season NOx mass emissions, Indiana's EGUs are currently subject to a state CSAPR Update trading program for ozone season NOx emissions that addresses these requirements for existing and new EGUs, but because Indiana's non-EGUs are not subject to that CSAPR trading program, the state must meet this requirement for existing and new non-EGUs through other SIP provisions. Indiana's new rule at 326 IAC 10-2 will prohibit ozone season NOx mass emissions from existing and new large non-EGUs other than blast furnace gas-fired units from exceeding 8,008 tons, the portion of the state's NOx SIP Call budget assigned to such large non-EGUs. Under 326 IAC 10-2, Indiana will conduct an annual review to ensure that the most recent ozone season emissions from large non-EGUs remain below the statewide budget, and in the SIP submission IDEM has committed to take action within one year as needed to address any exceedances. The new cap will replace the former enforcement mechanism of the NOx Budget Trading Program and the CAIR ozone season NOx trading program under which these sources were required to hold allowances equal to their emissions. The allowance holding requirements under the trading

programs have been unenforceable since EPA stopped administering the trading programs in 2009 and 2015, respectively. The addition of 326 IAC 10-2 thus will remedy an existing gap in the SIP by reestablishing enforceable limits on ozone season NOx mass emissions from these units.

Indiana has chosen a different regulatory approach for blast furnace gas-fired units that formerly would have been covered by the NOx Budget Trading Program. Unlike the state's other large non-EGUs, the blast furnace gas-fired units have never been relied upon by Indiana to achieve emissions reductions to meet the statewide NOx budget under the NOx SIP Call. In the state's original rules approved into the SIP in 2001, under which all blast furnace gas-fired units were subject to source-by-source emission rate limits under 326 IAC 10-3, as well as in the rule revisions approved into the SIP in 2003, under which the blast furnace gas-fired units at two sources were instead made subject to the NOx Budget Trading Program under 326 IAC 10-4, Indiana consistently projected no emission reductions from its blast furnace gas-fired units for purposes of meeting the state's overall NOx budget. See 66 FR at 56469 (Table 4) and 56473; June 26, 2003 SIP submission (Attachment K), available in the docket for this rulemaking. Consequently, there is no ongoing NOx SIP Call requirement under 40 CFR

51.121(f) (2) for the Indiana SIP to include enforceable limits on ozone season NOx mass emissions from these units, and to meet its other NOx SIP Call requirements, Indiana has now chosen to return to the regulatory approach in its original SIP submission (as approved into the SIP in 2001) by making all the state's blast furnace gas-fired units subject to source-by-source emission rate limits under 326 IAC 10-3. Importantly, this change of requirements will be implemented in a manner designed to maintain the overall stringency of the SIP for NOx SIP Call purposes. First, with respect to the blast furnace gas-fired units, the source-by-source emission rate limit of 0.17 lb/MMBtu that will apply to the units under 326 IAC 10-3 is the same limit that was used to project the units' uncontrolled emissions for purposes of both of the state's previous SIP submissions concerning the NOx SIP Call-related requirements for these units. Second, with respect to the remaining non-EGUs that will be subject to the new collective mass emissions cap under 326 IAC 10-2, Indiana has set the cap at 8,008 tons, which is the portion of the statewide NOx budget assigned to Indiana's non-EGUs under the NOx Budget Trading Program before the blast furnace gas-fired units at the two sources were added to the trading program. The SIP with the combined revisions included

in this action therefore will remain in compliance with Indiana's statewide NOx budget under the NOx SIP Call.

With respect to the ongoing NOx SIP Call requirement for emissions monitoring, Indiana's new rule at 326 IAC 10-2 will continue to require that non-EGUs subject to that rule monitor and report their ozone season NOx emissions under part 75, and the state's EGUs are subject to equivalent monitoring requirements under the state's CSAPR trading program for ozone season NOx emissions. The blast furnace gas-fired units being made subject to source-by-source emission rate limits under 326 IAC 10-3 will become subject to the non-part 75 monitoring requirements under that rule, which will be slightly modified to allow the use of historical part 75 emissions data as a basis for setting the emissions factors used to determine reported emissions. If, as anticipated, IDEM submits to EPA a SIP revision that would make non-part 75 monitoring approaches available to large non-EGUs subject to 326 IAC 10-2, the monitoring requirements for these units under the NOx SIP Call will be the subject of a future rulemaking.

EPA is finding that the new rule at 326 IAC 10-2 meets Indiana's ongoing obligations under the NOx SIP Call with respect to existing and new large non-EGUs that the state relied on to achieve emission reductions to meet its statewide NOx

budget. Specifically, the revised rules meet the requirement under 40 CFR 51.121(f)(2) for enforceable limits on the units' collective emissions of ozone season NOx mass emissions and the requirement under 40 CFR 51.121(i)(1) for monitoring sufficient to ensure compliance with those limits. The state's EGUs are currently complying with their analogous NOx SIP Call requirements through participation in the state's CSAPR Update trading program for ozone season NOx. EPA is also finding that the change in regulatory approach chosen by Indiana for the blast furnace gas-fired units is permissible under the NOx SIP Call regulations and is reasonable because it provides for continued emissions monitoring by the units and ensures that the overall stringency of the SIP is maintained for NOx SIP Call purposes.

Finally, EPA is also approving the removal from the SIP of Indiana's NOx Budget Trading Program rule and the remaining portions of the state's CAIR trading program rule for ozone season NOx emissions. With respect to the NOx Budget Trading Program rule, because EPA already approved sunseting of this rule in a previous action, the rule has no force and its removal from the SIP in this action will have no substantive effect. With respect to the remaining CAIR rule, which establishes emission monitoring requirements for the types of large non-EGUs

formerly subject to the NOx Budget Trading Program, the rule will generally be made redundant by the other rule changes approved in this action. Specifically, the large non-EGUs other than blast furnace gas-fired units will remain subject to equivalent part 75 monitoring requirements under 326 IAC 10-2, and the blast furnace gas-fired units will become subject to the non-part 75 monitoring requirements that EPA originally approved into the SIP for the units in 2001 as part of the state's original SIP submission addressing NOx SIP Call requirements.

In summary, EPA is finding that IDEM's addition of the new rule at 326 IAC 10-2, revision of the existing rule at 326 IAC 10-3, and repeal of the rules at 326 IAC 10-4 and 326 IAC 24-3 are consistent with applicable requirements under the CAA and the NOx SIP Call, and EPA is therefore approving these changes into the Indiana SIP.

C. Section 110(1) demonstration

IDEM's submission includes a demonstration showing that CAA section 110(1) does not prohibit approval of this SIP revision; such a demonstration is sometimes called an anti-backsliding demonstration. Section 110(1) provides that EPA cannot approve a SIP revision if the revision would interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

The majority of the rule changes approved in this action either add new requirements, remove provisions that have no impact on emissions or air quality, or replace existing requirements under one rule with identical requirements under another rule. As such, they will not interfere with any applicable CAA requirement. First, the emission limits established by revised 326 IAC 10-3 for blast furnace gas-fired units and by 326 IAC 10-2 for other non-EGUs are new requirements that will remedy a gap in the SIP that was created when EPA discontinued the administration of the CAIR trading program for ozone season NOx emissions. Second, removal from the SIP of the state's NOx Budget Trading Program rule will have no impact on emissions or air quality because EPA's earlier November 29, 2010 action approved sunseting of the rule, and EPA ceased administering the program when the CAIR trading program was implemented. The state's NOx Budget Trading Program rule can, therefore, no longer be implemented. Finally, with respect to the removal of the remaining CAIR rule for ozone season NOx emissions, which established monitoring requirements for non-EGUs (other than blast furnace gas-fired units) for NOx SIP Call purposes, the new rule at 326 IAC 10-2 will reestablish substantively identical part 75 monitoring requirements for these units.

The only SIP revision that we are approving in this action that will remove currently effective rule provisions without replacing them with substantively identical provisions relates to the emissions monitoring requirements for blast furnace gas-fired units at the two sources formerly subject to the NOx Budget Trading Program. These units are currently subject to part 75 monitoring requirements under 326 IAC 24-3, which the State has requested be removed from the SIP, and will become subject to non-part 75 monitoring requirements under the revised rule at 326 IAC 10-3. EPA concludes this change in monitoring requirements will not lead to an increase in emissions for two reasons. First, the change will relate only to monitoring requirements, not to emission limits; in fact, other rule changes approved in this action will make the units subject to additional enforceable emission limits. Second, even during the period after 2014 in which the sources were not subject to enforceable emission limits under the NOx Budget Trading Program or the CAIR trading program, the units' reported collective emissions in every year from 2015 through 2019 were well below the units' share of the previous collective emissions budget for the state's non-EGUs under 326 IAC 24-3. Specifically, the units' collective ozone season NOx mass emissions have not exceeded 1,193 tons, compared to their budget share of 1,526

tons. See emissions data at <https://ampd.epa.gov>; June 26, 2003 SIP submission (Attachment K), available in the docket for this rulemaking. These data indicate that the units' emissions limits and monitoring requirements for NOx SIP Call purposes have not been driving their historical emissions levels, with the logical consequence that the change in their monitoring requirements approved in this action will not cause a change in their emissions levels.

For these reasons, we conclude that the revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA. EPA is therefore finding that CAA section 110(1) does not prohibit approval of this SIP revision.

III. What Action is EPA Taking?

EPA is approving IDEM's request to modify its SIP to include the new rule at 326 IAC 10-2 and the revised rule at 326 IAC 10-3 and to remove 326 IAC 10-4 and 326 IAC 24-3.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed.

This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and

will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the 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 EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

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

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to

³ 62 FR 27968 (May 22, 1997).

approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[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. Parties with

objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 30, 2020.

Kurt A. Thiede,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. In § 52.770, the table in paragraph (c) is amended by:

a. Revising the section entitled “Article 10. Nitrogen Oxides Rules”; and

b. Removing the heading “Rule 3. Clean Air Interstate Rule (CAIR) NO X Ozone Season Trading Program” and the entries for 24-3-1, 24-3-2, 24-3-4, and 24-3-11.

The revision reads as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA--APPROVED INDIANA REGULATIONS

Indiana Citation	Subject	Indiana Effective Date	EPA approval date	Comments
* * * * *				
Article 10. Nitrogen Oxides Rules				
10-1	Nitrogen Oxides Control in Clark and Floyd Counties	6/12/1996	6/3/1997, 62 FR 30253	
10-2	NOx Emissions from Large Affected Units	8/26/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	

10-3	Nitrogen Oxide Reduction Program for Specific Source Categories	8/26/2018	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
10-5	Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE)	2/26/2006	10/1/2007, 72 FR 55664	
10-6	Nitrogen Oxides Emission Limitations for Southern Indiana Gas and Electric Company	8/30/2008	11/10/2009, 74 FR 57904	
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[FR Doc. 2020-02817 Filed: 2/20/2020 8:45 am; Publication Date: 2/21/2020]