

U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 8 hours that will prohibit entry within mile marker 169–172 of the Tennessee River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0719 to read as follows:

#### § 165.T08–0719 Safety Zone; Tennessee River, Decatur County, AL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Tennessee River from Mile Marker 169 through 172, extending the entire width of the river.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTPs designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by 502–779–5422 or on VHR–FM channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period(s).* This section will be enforced August 29 through August 31, 2022, from 8 a.m. through 4 p.m. each day.

Dated: August 22, 2022.

**H.R. Mattern,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA–HQ–OAR–2021–0668; FRL–8670.1–01–OAR]

#### Deadlines for Submission and Recordation of Allowance Allocations Under the Cross-State Air Pollution Rule (CSAPR) Trading Programs and the Texas SO<sub>2</sub> Trading Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is revising certain administrative deadlines under seven allowance trading programs for emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>).

**DATES:** This final rule is effective on August 26, 2022.

**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 <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 hardcopy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

David Lifland, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation, U.S. Environmental Protection Agency, Mail Code 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone: (202) 343–9151; email: [lifland.david@epa.gov](mailto:lifland.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

*Executive Summary:* The Environmental Protection Agency (EPA) is revising certain administrative deadlines under seven allowance trading programs for emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>). First, under the Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> Ozone Season Group 3 Trading Program, the deadline for the EPA to record advance allocations of allowances for the 2023 and 2024 control periods is being revised to September 1, 2023. Second, under all six CSAPR trading programs as well as the Texas SO<sub>2</sub> Trading Program, the deadlines for the EPA to record advance allocations of allowances for control periods in 2025 and later years are being revised to July 1 of the year immediately before the year of each such control period. Finally, the latest approvable deadlines for states to submit the amounts of state-determined advance allocations of allowances used in the CSAPR trading programs to the EPA under state implementation plan (SIP) revisions are being revised to June 1 of the year immediately before the year of each such control period. The revisions being finalized in this rule do not alter the recipients or amounts of any allowance allocations under any trading program and do not affect the recordation schedules for any allowances that are reserved for allocation after the end of the control period for which the allowances are being issued. On April 26, 2022, the EPA proposed to revise these administrative deadlines as part of a larger proposal (published at 87 FR 20036) that addresses multiple states' obligations to mitigate interstate air pollution with respect to the 2015 ozone national ambient air quality standards (NAAQS). The Agency is not taking final action with respect to the remainder of the April 2022 proposed rule at this time.

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## I. General

### A. Potentially Affected Entities

Some of the regulatory revisions finalized in this rule affect the EPA by extending the deadlines for the Agency to perform certain allowance recordation activities under the CSAPR trading programs and the Texas SO<sub>2</sub> Trading Program. The remaining regulatory revisions potentially affect states whose sources participate in one or more CSAPR trading programs, if the states have chosen or choose in the future to allocate allowances among their sources pursuant to SIP revisions, by extending the latest approvable deadlines for the states to submit the amounts of the state-determined allocations to the EPA. The following states are potentially affected by the latter revisions: Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

The sources participating in the trading programs in each covered state are generally fossil fuel-fired boilers and combustion turbines that at any time on or after January 1, 2005, serve electricity producing electricity for sale.<sup>1</sup> However,

as discussed in Section IV of this rule, the regulatory revisions finalized in this rule will have no substantive impact on participating sources because the revisions do not alter which sources are required to participate in any of the trading programs, the regulatory requirements applicable to the participating sources, or the amounts of allowances allocated to any source for use in any control period.

### B. Statutory Authority

Statutory authority to issue the regulatory revisions finalized in this rule 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) (SIP and federal implementation plan (FIP) requirements, including requirements for mitigation of interstate air pollution); CAA section 169A, 42 U.S.C. 7491 (visibility protection); and CAA section 301, 42 U.S.C. 7601 (general rulemaking authority). Because the revisions amend FIP provisions issued under CAA section 110(c), the rulemaking procedural requirements at CAA section 307(d), 42 U.S.C. 7607(d), apply to this action.

## II. Discussion of Revisions

### A. Background

The EPA currently administers seven similarly structured allowance trading programs for electricity generating units under regulations set forth at 40 CFR part 97, subparts AAAAA through GGGG.<sup>2</sup> Six of the programs were created as mechanisms to address obligations of the covered states—that is, the states where the participating sources are located—under CAA section 110(a)(2)(D)(i)(I), 42 U.S.C. 7410(a)(2)(D)(i)(I), known as the good neighbor provision, with respect to the 1997 and 2006 fine particulate matter NAAQS and the 1997 and 2008 ozone NAAQS. These six programs, collectively referred to in this rule as the CSAPR trading programs, are the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, the CSAPR SO<sub>2</sub> Group 1 Trading Program, and the CSAPR SO<sub>2</sub> Group 2 Trading Program, all established in the original CSAPR;<sup>3</sup> the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, established in the

applicability criteria, *see* 40 CFR 97.904 and 97.911(a)(1), but all of these sources also participate in one of the CSAPR trading programs.

<sup>2</sup> This final rule does not amend any provision of the additional SO<sub>2</sub> allowance trading program that the EPA administers under the Acid Rain Program regulations at 40 CFR parts 72–78.

<sup>3</sup> 76 FR 48208 (August 8, 2011).

CSAPR Update;<sup>4</sup> and the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, established in the Revised CSAPR Update.<sup>5</sup> The seventh program is the Texas SO<sub>2</sub> Trading Program, which was created to address certain visibility protection requirements under CAA section 169A but shares many structural elements and is administered in parallel with the CSAPR trading programs.<sup>6</sup> All seven trading programs were promulgated as FIP provisions under CAA section 110(c).

The functions that the EPA performs to administer the seven trading programs include allocation and recordation of allowances. Allocation is the process of determining the shares of the overall quantities of allowances issued for a given control period to be initially credited to various recipients.<sup>7</sup> The amounts of most allowance allocations are determined before (or sometimes during) the control period in question. These allocations are referred to in this rule as advance allocations to distinguish them from other allowance allocations whose amounts are determined after the end of each control period.<sup>8</sup> Under all seven trading programs, the EPA determines the default amounts of the advance allocations of allowances to the sources in each covered state from the respective state's emissions budget for each control period. However, for most control periods under the CSAPR trading programs, the Agency also allows covered states to replace the default EPA-determined advance allocations with state-determined advance allocations pursuant to approved SIP revisions.<sup>9</sup>

Recordation is the process of moving allowances into, out of, or between

<sup>4</sup> 81 FR 74504 (October 26, 2016).

<sup>5</sup> 86 FR 23054 (April 30, 2021).

<sup>6</sup> 82 FR 48234 (October 17, 2017); affirmed with amendments, 85 FR 49170 (August 12, 2020). The EPA has convened a proceeding to reconsider the amended rule. *See* EPA Motion to Govern, *National Parks Conservation Assn. v. EPA*, No. 20–1408 (D.C. Cir. filed June 28, 2021). This final rule has no bearing on the reconsideration proceeding.

<sup>7</sup> *See, e.g.*, 40 CFR 97.1002 (definition of allocation).

<sup>8</sup> Under the CSAPR trading programs, some allowances issued for each control period are reserved in set-asides for allocation after the end of the control period. Allowances reserved in the Texas SO<sub>2</sub> Trading Program's supplemental allowance pool are allocated on a parallel schedule. This final rule does not amend any provisions relating to these reserved allowances.

<sup>9</sup> *See, e.g.*, 40 CFR 52.38(b)(11)–(12) (2021). A state may also choose to distribute allowances through an auction process instead of through a no-cost allocation process. *Id.* For simplicity, in this rule the EPA uses the term “state-determined allocations” to include the results of any state auction process because the same deadlines apply regardless of the state's choice of process.

<sup>1</sup> *See, e.g.*, 40 CFR 97.1004. The sources participating in the Texas SO<sub>2</sub> Trading Program are identified by a list in the regulations rather than by

accounts in the EPA's Allowance Management System for purposes of allocation, auction, transfer, or deduction.<sup>10</sup> Recordation is performed exclusively by the EPA.<sup>11</sup> The regulations for each trading program include deadlines for the Agency to record the amounts of advance allocations of allowances issued for each control period in sources' compliance accounts. To promote regulatory clarity and minimize compliance and administrative burdens for sources and the EPA, the recordation deadlines are generally parallel across the seven trading programs. In addition, for states that choose to provide state-determined allowance allocations pursuant to SIP revisions, the regulations governing the approvability of the SIP revisions require the states' rules to include deadlines for submitting the amounts of the advance allocations to the EPA that are coordinated with the Agency's deadlines for recording the allowances in sources' compliance accounts. When the proposal underlying this final rule was issued, the next deadline for the EPA to record the amounts of advance allocations of allowances that had not already been recorded was July 1, 2022, under all seven trading programs, and the associated latest approvable deadline for states to submit the amounts of any state-determined advance allocations to the EPA was June 1, 2022.

In April 2022, the EPA published a proposal to address multiple states' obligations under the good neighbor provision with respect to the 2015 ozone NAAQS.<sup>12</sup> Under the proposal, the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program would be revised in a number of ways. Among other things, the program would be expanded to apply to sources in additional states, the existing state emissions budgets and default unit-level allowance allocations for the 2023 and 2024 control periods would be updated, and starting with the 2025 control period the state emissions budgets and default unit-level allowance allocations would be dynamically determined in the year immediately before the year of each control period according to procedures to be set forth in the final revised

regulations.<sup>13</sup> In conjunction with these proposed revisions, the EPA proposed to revise that trading program's administrative deadlines for the Agency to record advance allocations of allowances and the latest approvable deadlines for states to submit the amounts of any state-determined advance allocations to the EPA pursuant to SIP revisions.<sup>14</sup> The proposal also includes parallel proposed revisions to the recordation and latest approvable submission deadlines for the other five CSAPR trading programs and the Texas SO<sub>2</sub> Trading Program.<sup>15</sup> Under the proposed revised schedules, there would be no July 1, 2022, deadline to record advance allocations of allowances for use in any of the seven trading programs.

Following an extension, the public comment period on the April 2022 proposal closed on June 21, 2022.<sup>16</sup> No comments were received addressing the proposed revisions to the recordation deadlines and latest approvable submission deadlines,<sup>17</sup> and the EPA is taking this action to expeditiously resolve the differences between the deadlines as previously in effect and the proposed revised deadlines included in the proposal. The Agency is not responding to comments or taking action on any other aspects of the April 2022 proposal at this time.

#### *B. Deadlines for Recordation of Allowance Allocations*

The regulations for each of the seven trading programs addressed in this rule include schedules for the EPA to record advance allocations of allowances issued for each control period. Under the regulations for the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program in effect at the time of the April 2022 proposal, advance allocations of allowances issued for control periods through 2022 had already been recorded; the recordation deadline for advance allocations for the 2023 and 2024 control periods was July 1, 2022; the recordation deadline for advance allocations for the 2025 and 2026 control periods was July 1, 2023; and

the recordation deadlines for advance allocations for control periods in 2027 and later years were July 1 of the third year before the year of each such control period.<sup>18</sup> In the April 2022 proposal, the EPA proposed to revise the recordation deadline for advance allocations for the 2023 and 2024 control periods to the date 30 days after the effective date of a final rule and to revise the recordation deadlines for advance allocations for control periods in 2025 and later years to July 1 of the year immediately before the year of each such control period.<sup>19</sup>

Under the regulations for the other five CSAPR trading programs and the Texas SO<sub>2</sub> Trading Program in effect at the time of the April 2022 proposal, advance allocations of allowances issued for control periods through 2024 had already been recorded and the recordation deadlines for advance allocations for control periods in 2025 and later years were July 1 of the third year before the year of each such control period (e.g., the deadline for recording 2025 advance allocations was July 1, 2022).<sup>20</sup> In the April 2022 proposal, the EPA proposed to revise the recordation deadlines for advance allocations for control periods in 2025 and later years to match the recordation deadlines established in a final rule for the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program for the same control periods, such that if the remainder of the proposal was finalized generally as proposed, the recordation deadlines for advance allocations for control periods in 2025 and later years under all seven trading programs would be July 1 of the year immediately before the year of each such control period.<sup>21</sup>

The April 2022 proposal discussed several reasons supporting the proposed revisions to recordation deadlines. First, with respect to the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, the deadline revisions would be necessary to accommodate proposed updates to the amounts of the advance allocations of allowances to be recorded for the 2023 and 2024 control periods and proposed changes to the schedule for determining the amounts of the advance allocations for later control periods.<sup>22</sup> Second, with respect to the other six trading programs, maintaining consistency in recordation deadlines

<sup>10</sup> See, e.g., 40 CFR 97.1002 (definition of recordation).

<sup>11</sup> In some cases, the EPA records allowance transactions automatically in response to electronically submitted instructions from representatives for the accounts where the allowances are held.

<sup>12</sup> 87 FR 20036 (April 6, 2022).

<sup>13</sup> 87 FR 20115–19 (state emissions budgets) and 20128–30 (unit-level allocations).

<sup>14</sup> 87 FR 20129–30.

<sup>15</sup> 87 FR 20140.

<sup>16</sup> 87 FR 29108 (May 12, 2022).

<sup>17</sup> One comment includes a description of the proposed recordation deadline revisions under the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, but the comment concerns the timing of information on the amounts of state emissions budgets and unit-level allocations under that trading program, not the timing of recordation of allowances in sources' compliance accounts. See Comments of Basin Electric Power Cooperative, EPA–HQ–OAR–2021–0668–0547, at 60.

<sup>18</sup> See 40 CFR 97.1021(a)–(f) (2021).

<sup>19</sup> 87 FR 20129–30. The EPA notes that under the proposal, the recordation deadline for the 2024 advance allocations would be extended for several months if a state provides a timely letter of intent to submit state-determined allocations for that control period. See 87 FR at 20150.

<sup>20</sup> See, e.g., 40 CFR 97.821(a)–(f) (2021).

<sup>21</sup> 87 FR 20140.

<sup>22</sup> 87 FR 20130.

across the various trading programs to the extent possible is expected to minimize the time and cost expended by sources to understand and comply with multiple trading programs and would support greater administrative efficiency by the EPA.<sup>23</sup> Third, lowering the number of future control periods for which allowances are recorded in advance will reduce the likelihood that the Agency might need to recall already-recorded allowances as part of a transition to new regulatory requirements in a future rulemaking.<sup>24</sup> The EPA also observed that lowering the number of future control periods for which allowances are recorded in advance is not expected to adversely impact allowance market liquidity, because the historical data on transfers of recorded allowances between accounts in the EPA's Allowance Management System show few arms-length transfers of allowances issued for control periods more than one control period in the future.<sup>25</sup>

Although the April 2022 proposal's rationale for the proposed recordation deadline revisions was provided in the context of a larger set of proposed trading program revisions, the same rationale supports finalizing the recordation deadline revisions on a stand-alone basis while the Agency continues to work toward a final rule addressing the remainder of the proposal in light of the comments received. With respect to the proposed revision to the deadline for recording the 2023 and 2024 advance allocations of allowances used in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, finalizing a revised recordation deadline at this time, before issuance of a final rule addressing the remainder of the proposal, would accommodate updates to the allocation amounts if such updates are in fact finalized and would thereby facilitate an orderly implementation process for such a final rule. Conversely, if the Agency did not finalize a recordation deadline revision at this time and instead were to record advance allocations of allowances for the 2023 and 2024 control periods before completing consideration of the remainder of the proposal, the recorded amounts could become incorrect upon issuance of a more comprehensive final rule. Correcting the incorrect amounts would then require an allowance recall, which would reduce regulatory clarity and create an additional compliance

requirement for sources and administrative burden for the EPA.

It is not possible in this stand-alone rule to finalize the specific revised recordation deadline that was included in the April 2022 proposal for the 2023 and 2024 advance allocations—that is, 30 days after the effective date of a final rule addressing the full proposal. However, the EPA believes that finalizing a recordation deadline of September 1, 2023 in this rule for the 2023 and 2024 advance allocations serves the same dual purpose of, first, allowing sufficient time for a final rule addressing the remainder of the proposal to take effect and, second, recording the allowances far enough in advance of the compliance deadlines for the respective control periods to allow ample time for sources to engage in any desired allowance trading activity. Allowances allocated for the 2023 control period will be recorded in sources' compliance accounts before the end of the 2023 control period and eight months before the June 1, 2024, date for demonstrating compliance for the 2023 control period. Further, if a rule addressing the remainder of the proposal is finalized on a schedule that makes it possible for the allowances to be recorded earlier than September 1, 2023, the EPA could accelerate recordation accordingly.<sup>26</sup>

The April 2022 proposal's rationale also supports finalizing the remaining proposed revisions to recordation deadlines under all seven trading programs on a stand-alone basis. Under these proposed revisions, advance allocations of allowances for control periods in 2025 and later years under all seven trading programs would be recorded by July 1 of the year before the year of each such control period. For the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, as stated in the proposal, finalizing the revisions would accommodate the proposed revisions to the schedule for determining allowance allocations for control periods in 2025 and later years, and for the allowances issued for the 2025 and 2026 control periods in particular, extending the recordation deadline would also avert the possible need for an allowance recall that otherwise could arise if advance allocations for these control periods were recorded before the effective date of a final rule addressing the remainder of the April 2022 proposal. For the remaining trading

programs, as stated in the proposal, finalizing the recordation deadline revisions on a stand-alone basis will minimize compliance burdens and support administrative efficiency by maintaining consistency across the trading programs and will reduce the likelihood that future allowance recalls would be needed in conjunction with possible future rulemakings. Under all seven trading programs, allowances allocated for control periods in 2025 and later years will be recorded in sources' compliance accounts in the year before the start dates and almost 2 years before the compliance determination dates of the respective control periods.

The EPA notes that finalization of the proposed revisions to recordation deadlines is separable from the other elements of the April 2022 proposal and does not require finalization of the proposal's other elements or otherwise represent a prejudgment of the Agency concerning the content of a potential future rule. If for some reason the EPA does not finalize, or is delayed in finalizing, the proposal's other elements, finalizing the revisions to the recordation deadlines would still provide the benefits described earlier concerning reduction of the likelihood of future allowance recalls and maintenance of consistency across the trading programs and would have no adverse impact on any source. In this circumstance, the amounts of sources' allocations to be recorded for all control periods under all seven trading programs would remain unchanged from the amounts already determined and announced pursuant to previous rulemakings unless and until a subsequent rule altering the allocation amounts is finalized.

### *C. Deadlines for Submission of State-Determined Allowance Allocations*

For all the CSAPR trading programs, covered states have options to replace the default EPA-determined allowance allocations with state-determined allowance allocations pursuant to approved SIP revisions. Among other things, the regulations governing the EPA's approval of such SIP revisions require the states' rules to include deadlines for submitting the amounts of the allocations to the EPA that are coordinated with the Agency's deadlines for recording the allowances in sources' compliance accounts. Under the regulations in effect at the time of the April 2022 proposal, the latest approvable deadline for submission of state-determined advance allocations for each control period was June 1 immediately before the EPA's

<sup>26</sup> A final rule addressing the remainder of the April 2022 proposal could also finalize the proposed provision extending the recordation deadline for 2024 advance allocations if a state provides a timely letter of intent to submit state-determined allocations for that control period.

<sup>23</sup> 87 FR 20140.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

corresponding July 1 recordation deadline for the control period.<sup>27</sup> For control periods in 2025 and later years, these submission deadlines therefore were generally in the third year before the year of each such control period.<sup>28</sup>

In the April 2022 proposal, the EPA proposed to revise the latest approvable deadlines for submission of state-determined advance allocations for the control periods in 2025 and later years under all the CSAPR trading programs to June 1 of the year immediately before the year of each such control period (*i.e.*, one month before the EPA's proposed deadlines to record advance allocations of allowances for the same control periods). In the case of the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, the reason provided for the proposed revision was to coordinate with the proposed revised schedule for determining state emissions budgets for the control periods in 2025 and later years, under which the state emissions budgets would be finalized by May 1 of the year immediately before the year of each control period. Revision of the submission deadline for state-determined allocations under this trading program would be necessary because a state would be unable to determine the amounts of unit-level allocations for a given control period without first knowing the amount of the state emissions budget for the control period.<sup>29</sup> In the case of the other trading programs, the reason provided for the proposed revision to the latest approvable submission deadlines was to maintain consistent deadlines across the various trading programs to the extent possible so as to facilitate greater administrative efficiency by states that choose to provide state-determined allowance allocations.<sup>30</sup> For all the trading programs, an additional reason supporting the revisions to the latest allowable submission deadlines is to maintain the existing relationship to the EPA's corresponding recordation deadlines. That relationship is intended to maximize states' flexibility by allowing the states to submit state-determined allocations to the EPA as late as one month before the EPA's

deadlines for recording the allowances in sources' compliance accounts.

The EPA considers it appropriate to revise the latest approvable deadlines for states to submit state-determined advance allocations to the Agency in the same stand-alone action as the corresponding recordation deadlines so as to maintain the existing relationship between the two sets of deadlines. The EPA does not need to receive the amounts of any state-determined allocations more than one month before the Agency's corresponding recordation deadlines, and revising the recordation deadlines makes it possible for the EPA to offer states the flexibility to adopt later submission deadlines. The EPA notes that revising the latest approvable submission deadlines in this rule will not obligate any state that already has an approved SIP revision authorizing the state to determine allocations of allowances for some of the CSAPR trading programs to adopt a revised submission deadline.

### III. Final Action

The EPA is taking final action to revise the regulations for the CSAPR trading programs and the Texas SO<sub>2</sub> Trading Program as follows. Under the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, the deadline at 40 CFR 97.1021 for the EPA to record advance allocations of allowances for the control periods in 2023 and 2024 is being revised to September 1, 2023. Under all the CSAPR trading programs and the Texas SO<sub>2</sub> Trading Program, the deadlines at 40 CFR 97.421, 97.521, 97.621, 97.721, 97.821, 97.921, and 97.1021 for the EPA to record advance allocations of allowances for the control periods in 2025 and later years are being revised to July 1 of the year immediately before the year of each such control period. Under the regulations at 40 CFR 52.38 and 52.39 governing approvability of SIP revisions that authorize states to determine the allocations of allowances used in the CSAPR trading programs, the latest approvable deadlines for submission to The EPA of the amounts of state-determined advance allocations for the control periods in 2025 and later years are being revised to June 1 of the year immediately before the year of each such control period.

The EPA is making the regulatory revisions finalized in this rule effective immediately upon publication in the **Federal Register**. As noted in Section I.B of this rule, the revisions are being issued under CAA section 307(d), which does not include provisions governing the effective date of a rule issued under its procedures. While Congressional Review Act (CRA) section 801(a)(3), 5

U.S.C. 801(a)(3), and Administrative Procedure Act (APA) section 553(d), 5 U.S.C. 553(d), require specified minimum periods between the dates of publication and effectiveness for certain rules (with various exceptions), this action is not subject to such requirements under either statute.<sup>31 32</sup> Accordingly, the EPA has discretion in establishing the effective date for the revisions finalized in this action. Resolving the differences between the previously effective deadlines and the deadlines in the April 2022 proposal at this time will provide clarity for stakeholders and facilitate an orderly process for implementing any additional regulatory revisions that may be promulgated after consideration of comments on the remainder of the April 2022 proposal. Further, as discussed in Section IV of this rule, the deadline revisions finalized in this action will not have any adverse impacts on any state or source. For these reasons, the Agency finds it is appropriate to make the deadline revisions effective immediately upon publication.

Although APA section 553(d) does not apply to this action, in making the regulatory revisions finalized in this action effective immediately upon publication, the EPA has nevertheless considered this section's underlying purposes. The primary purpose of the section's general requirement for a minimum period between a covered rule's dates of publication and effectiveness is "to give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996). The revisions finalized in this action do not impose any new regulatory requirements on either covered states or participating sources and therefore do not necessitate time for the states or sources to adjust their behavior or otherwise prepare for implementation.

<sup>31</sup> CRA section 801(a)(3) generally provides that a "major rule" may not take effect less than 60 days after the rule is published in the **Federal Register**. Under CRA section 804(2), 5 U.S.C. 804(2), a major rule generally is a rule that the Office of Management and Budget finds has resulted in or is likely to result in (i) an annual effect on the economy of \$100 million or more, (ii) major cost or price increases, or (iii) other significant adverse economic effects. This action is not a major rule for CRA purposes.

<sup>32</sup> APA section 553(d) generally provides that a covered rule may not take effect less than 30 days after the rule is published in the **Federal Register**. However, CAA section 307(d)(1) states that "[t]he provisions of [APA] section 553 . . . shall not, except as expressly provided in [CAA section 307(d)], apply to actions to which [CAA section 307(d)] applies." This action is subject to CAA section 307(d), which does not contain any provision making the action subject to APA section 553(d).

<sup>27</sup> See, e.g., 40 CFR 52.38(b)(11)(iii)(B) (2021).

<sup>28</sup> The latest approvable deadlines for submission of state-determined allocations of allowances used in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program for the control periods in 2023, 2024, and 2025 would have been in the first or second year before the year of the control period. However, at this time no covered state has sought approval for a SIP revision authorizing state-determined allocations of the allowances used in this trading program.

<sup>29</sup> 87 FR 20130.

<sup>30</sup> 87 FR 20140.

Further, APA section 553(d)(1) expressly allows an effective date earlier than 30 days after publication for a rule that “grants or recognizes an exemption or relieves a restriction.” This action relieves an existing restriction on covered states by extending the latest approvable deadlines for the states to submit any optional state-determined allowance allocations to the EPA. Consequently, making the deadline revisions effective immediately upon publication of the final action is consistent with the purposes of APA section 553(d).

#### IV. Expected Impacts

The regulatory revisions to the CSAPR trading programs and the Texas SO<sub>2</sub> Trading Program finalized in this rule extend the deadlines by which the EPA will record advance allocations of allowances in sources’ compliance accounts as well as, for the CSAPR trading programs, the latest approvable deadlines by which covered states must submit any state-determined advance allocations to the EPA for subsequent recordation. The EPA expects the principal impacts of the revisions to be more orderly implementation of any final rule addressing the remainder of the April 2022 proposal and reduction of the likelihood of future allowance recalls in possible future rulemakings. For covered states, the revisions to the latest approvable submission deadlines will also generally increase flexibility regarding the timing of the states’ optional activities to determine the amounts of allowance allocations under the CSAPR trading programs.

The EPA expects the sources participating in the trading programs to benefit from improved regulatory clarity and potentially also from avoidance of the need to expend time and resources to comply with additional allowance recalls. Further, the EPA expects no adverse impact on any source. The revisions do not alter which sources are required to participate in any of the trading programs, the regulatory requirements applicable to the participating sources, or the amounts of emissions allowances allocated to any source for use in any control period. Advance allocations of allowances issued for the 2023 control period under the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program will be recorded before the end of that control period, which is the point in time at which trading of allowances for a given control period typically becomes most active, and well before June 1, 2024, which is the date when sources must hold allowances to demonstrate compliance for that control period. In all other cases, advance

allocations of allowances for each control period will be recorded in sources’ compliance accounts in the year before the start date and almost 2 years before the compliance determination date of the control period for which the allowances are being issued. Moreover, as observed in the proposal and referenced in Section II.B of this rule, lowering the number of future control periods for which allowances are recorded in advance is not expected to adversely impact allowance market liquidity, because the historical data on transfers of recorded allowances between accounts in the EPA’s Allowance Management System show few arms-length transfers of allowances issued for control periods more than one control period in the future.

#### V. 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 13563: Improving Regulation and Regulatory Review

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

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. This action makes no changes to either the information collected or the number of respondents.

##### C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601–602. This action will not impose any requirements on small entities. This action simply extends certain administrative deadlines that apply to the EPA or covered states under existing regulations.

##### D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small

governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

##### 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.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. This action simply extends certain administrative deadlines that apply to the EPA or covered states under existing regulations.

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

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

##### I. National Technology Transfer 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

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an

environmental health or safety standard. This action simply extends certain administrative deadlines that apply to the EPA or covered states under existing regulations.

#### *K. Congressional Review Act*

This action is subject to the Congressional Review Act, 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. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *L. Determination Under CAA Section 307(b)*

CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), indicates which United States Courts of Appeals have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) if (i) the Agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) the action is locally or regionally applicable, but “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.” This action amends existing regulations that apply to 27 states and to sources in those states. For this reason, this final action is nationally applicable. In the alternative, the Administrator hereby finds that this final action is based on a determination

of nationwide scope and effect for purposes of CAA section 307(b)(1). Thus, pursuant to CAA section 307(b), any petitions for review of this final action must be filed in the D.C. Circuit within 60 days from the date this final action is published 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.*

##### **TABLE 1 TO PARAGRAPH (a)(4)(i)(B)**

| Year of the control period for which CSAPR NO <sub>x</sub> Annual allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|--|
| 2025 and any year thereafter  | June 1 of the year before the year of the control period.                      |

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

##### **TABLE 2 TO PARAGRAPH (a)(5)(i)(B)**

| Year of the control period for which CSAPR NO <sub>x</sub> Annual allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|--|
| 2025 and any year thereafter  | June 1 of the year before the year of the control period.                      |

\* \* \* \* \*

(b) \* \* \*

(ii) \* \* \*

#### **Subpart A—General Provisions**

- 2. Amend § 52.38 by:

- a. In Table 1 to paragraph (a)(4)(i)(B), Table 2 to paragraph (a)(5)(i)(B), Table 3 to paragraph (b)(4)(ii)(B), Table 4 to paragraph (b)(5)(ii)(B), Table 5 to paragraph (b)(8)(iii)(B), and Table 6 to paragraph (b)(9)(iii)(B), revising the entries for “2025 and any year thereafter”;
- b. In paragraph (b)(11)(iii) introductory text, removing “2023” and adding in its place “2025”;
- c. In paragraph (b)(11)(iii)(B), removing “no later than the dates in Table 7 to this paragraph;” and adding in its place “by June 1 of the year before the year of such control period;”, and removing Table 7 to paragraph (b)(11)(iii)(B);
- d. In paragraph (b)(12)(iii) introductory text, removing “2023” and adding in its place “2025”;
- e. In paragraph (b)(12)(iii)(B), removing “no later than the dates in Table 8 to this paragraph;” and adding in its place “by June 1 of the year before the year of such control period;”, and removing Table 8 to paragraph (b)(12)(iii)(B); and
- f. In paragraph (b)(17)(ii), removing “2023” and adding in its place “2025”.
- The revisions 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?**

- (a) \* \* \*
- (4) \* \* \*
- (i) \* \* \*
- (B) \* \* \*

(B) \* \* \*

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

| Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group<br>1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the<br>Administrator |
|--|---|
| * * * * *  | * * * * *   |
| 2025 and any year thereafter .....   | June 1 of the year before the year of the control period.                         |
| * * * * * (B) * * *<br>(5) * * *<br>(ii) * * *   |   |

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

| Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group<br>1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the<br>Administrator |
|--|---|
| * * * * *  | * * * * *   |
| 2025 and any year thereafter .....   | June 1 of the year before the year of the control period.                         |
| * * * * * (B) * * *<br>(8) * * *<br>(iii) * * *  |   |

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

| Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group<br>2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the<br>Administrator |
|--|---|
| * * * * *  | * * * * *   |
| 2025 and any year thereafter .....   | June 1 of the year before the year of the control period.                         |
| * * * * * (B) * * *<br>(9) * * *<br>(iii) * * *  |   |

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

| Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group<br>2 allowances are allocated or auctioned  | Deadline for submission of allocations or auction results to the<br>Administrator |
|---|---|
| * * * * *   | * * * * *   |
| 2025 and any year thereafter .....  | June 1 of the year before the year of the control period.                         |
| * * * * * The revisions read as follows: (e) * * *<br>■ 3. Amend § 52.39 in Table 1 to paragraph (e)(1)(ii), Table 2 to paragraph (f)(1)(ii), Table 3 to paragraph (h)(1)(ii), and Table 4 to paragraph (i)(1)(ii) by revising the entries for “2025 and any year thereafter”. § 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide? (1) * * *<br>* * * * * (ii) * * * |   |

TABLE 1 TO PARAGRAPH (e)(1)(ii)

| Year of the control period for which CSAPR SO <sub>2</sub> Group 1 allowances<br>are allocated or auctioned | Deadline for submission of allocations or auction results to the<br>Administrator |
|---|---|
| * * * * *   | * * * * *   |
| 2025 and any year thereafter .....  | June 1 of the year before the year of the control period.                         |
| * * * * * (f) * * * (i) * * *   |   |



(ii) \* \* \*

TABLE 2 TO PARAGRAPH (f)(1)(ii)

| Year of the control period for which CSAPR SO <sub>2</sub> Group 1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|--|--|
| * * * * *  | * * * * *  |
| 2025 and any year thereafter .....   | June 1 of the year before the year of the control period.                      |

\* \* \* \* \* (ii) \* \* \*

(h) \* \* \*

(1) \* \* \*

TABLE 3 TO PARAGRAPH (h)(1)(ii)

| Year of the control period for which CSAPR SO <sub>2</sub> Group 2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|--|--|
| * * * * *  | * * * * *  |
| 2025 and any year thereafter .....   | June 1 of the year before the year of the control period.                      |

\* \* \* \* \* (ii) \* \* \*

(i) \* \* \*

(1) \* \* \*

TABLE 4 TO PARAGRAPH (i)(1)(ii)

| Year of the control period for which CSAPR SO <sub>2</sub> Group 2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|--|--|
| * * * * *  | * * * * *  |
| 2025 and any year thereafter .....   | June 1 of the year before the year of the control period.                      |

\* \* \* \* \*

**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**

■ 4. 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 AAAAA—CSAPR NO<sub>x</sub> Annual Trading Program**

**§ 97.421 [Amended]**

■ 5. In § 97.421, amend paragraph (f)(2) by removing “2022” and adding in its place “2024”, and removing the word “third” before “year after the year”.

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

**§ 97.521 [Amended]**

■ 6. In § 97.521, amend paragraph (f)(2) by removing “2022” and adding in its place “2024”, and removing the word “third” before “year after the year”.

**Subpart CCCCC—CSAPR SO<sub>2</sub> Group 1 Trading Program**

**§ 97.621 [Amended]**

■ 7. In § 97.621, amend paragraph (f)(2) by removing “2022” and adding in its place “2024”, and removing the word “third” before “year after the year”.

**Subpart DDDDD—CSAPR SO<sub>2</sub> Group 2 Trading Program**

**§ 97.721 [Amended]**

■ 8. In § 97.721, amend paragraph (f)(2) by removing “2022” and adding in its place “2024”, and removing the word “third” before “year after the year”.

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

**§ 97.821 [Amended]**

■ 9. In § 97.821, amend paragraph (f) by removing “2022” and adding in its place “2024”, and removing the word “third” before “year after the year”.

**Subpart FFFFF—Texas SO<sub>2</sub> Trading Program**

**§ 97.921 [Amended]**

■ 10. In § 97.921, amend paragraph (b)(2) by removing “2022” and adding in its place “2024”, and removing the word “third” before “year after the year”.

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

**§ 97.1021 [Amended]**

■ 11. Amend § 97.1021 by:

■ a. In paragraph (c), removing “July 1, 2022, the” and adding in its place “September 1, 2023, the”;

■ b. Removing and reserving paragraph (d); and

■ c. In paragraph (f), removing the word “third” before “year after the year”.

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