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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0700; FRL-9999-33-Region 5]

**Air Plan Approval; Indiana; Regional Haze Plan and Prong 4
(Visibility) for the 2006 and 2012 PM_{2.5}, 2010 NO₂, 2010 SO₂, and
2008 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking action under the Clean Air Act (CAA) on Indiana's November 27, 2017 State Implementation Plan (SIP) submittal addressing regional haze. This action is based on EPA's previous determination that a state's implementation of the Cross-State Air Pollution Rule (CSAPR) program continues to meet the criteria of the Regional Haze Rule (RHR) to qualify as an alternative to the application of Best Available Retrofit Technology (BART). EPA is taking several related actions. First, EPA is approving the portion of Indiana's November 27, 2017 SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to CSAPR for certain regional haze requirements. EPA is also converting EPA's limited approval/limited disapproval of Indiana's regional haze SIP to a full approval and withdrawing the Federal Implementation Plan

(FIP) provisions that address the limited disapproval. Finally, EPA is approving the visibility prong ("prong 4") of Indiana's infrastructure SIP submittals for the 2006 24-hour and 2012 annual fine particulate matter ($\text{PM}_{2.5}$), 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS) and converting EPA's disapproval of the visibility portion of Indiana's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0700. All documents in the docket are listed in the <http://www.regulations.gov> Web site. 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 hard copy form. Publicly available docket materials are available either through <http://www.regulations.gov> or at the EPA Region 5 office (please contact the person identified in the "For Further Information Contact" section for availability information).

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background.

II. What Comments Did EPA Receive on the Proposed Rule?

III. What Action is EPA Taking?

IV. Statutory and Executive Order Reviews.

I. Background.

On May 22, 2019 (84 FR 23504), EPA proposed to approve Indiana's November 27, 2017 SIP revision, including full approval of Indiana's Regional Haze SIP, the removal of the Regional Haze FIP, and the approval of prong 4 elements. The specific details of Indiana's November 27, 2017 SIP revision and the rationale for EPA's approval are discussed in the notice of proposed rulemaking and will not be restated here.

Indiana submitted infrastructure SIPs for the following NAAQS: 2006 24-hour PM_{2.5} (October 20, 2009, June 25, 2012, July 12, 2012, and May 22, 2013); 2012 annual PM_{2.5} (December 10, 2016); 2010 NO₂ (January 15, 2013); 2010 SO₂ (May 22, 2013); and 2008 ozone (December 12, 2011), which relied on the State having a fully approved regional haze SIP to satisfy its prong 4 requirements. However, EPA had not fully approved Indiana's

regional haze SIP, as the Agency issued a limited disapproval of the State's original regional haze plan on June 7, 2012 (77 FR 33642), due to the plan's reliance on CAIR. EPA finalized a limited approval of Indiana's regional haze SIP on June 11, 2012 (77 FR 34218), as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR.

In the June 7, 2012 limited disapproval action, EPA also amended the RHR to provide that participation by a state's electric generating units (EGUs) in a CSAPR trading program for a given pollutant - either a CSAPR Federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision - qualifies as a BART alternative for those EGUs for that pollutant. On September 29, 2017 (82 FR 45481), EPA published a final rule affirming the continued validity of the Agency's 2012 determination that participation in CSAPR meets the RHR's criteria for an alternative to the application of source specific BART. On November 27, 2017, to correct the deficiencies in its regional haze SIP and obtain approval of the portions of the aforementioned infrastructure SIPs that rely on the regional haze SIP, Indiana submitted a SIP revision to replace reliance on CAIR with reliance on CSAPR.

In this final action, EPA is approving Indiana's November 27, 2017 regional haze SIP revision and converting EPA's

previous limited approval/limited disapproval of Indiana's regional haze SIP to a full approval. Specifically, EPA finds that Indiana's November 27, 2017, SIP revision satisfies the SO₂ and NO_x BART requirements of the RHR for the BART-eligible sources in Indiana subject to the CSAPR annual NO_x, annual SO₂, and ozone season NO_x trading programs.¹ For reasons more fully explained in the proposal, and consistent with EPA's 2013 guidance on the prong 4 element of infrastructure SIPs,² with this approval of Indiana's regional haze SIP revision, the State's regional haze SIP is now fully approved and, therefore, provides the measures needed to ensure that its emissions do not interfere with any other state's efforts to protect visibility. Therefore, EPA is also approving the prong 4 portion of Indiana's 2006 24-hour PM_{2.5} submissions, 2012 annual PM_{2.5} submission, 2010 SO₂ submission, and 2010 NO₂ submission, as well as converting EPA's disapproval of the prong 4 portion of

¹ On December 17, 2018 (83 FR 64472), EPA approved Indiana's regulations requiring large Indiana EGUs to participate in new CSAPR state trading programs for annual NO_x, annual SO₂, and ozone season NO_x emissions integrated with the CSAPR Federal trading programs and replaced the corresponding FIP requirements. Indiana's State trading program rules, 326 IAC 24-5 (Nitrogen Oxides (NO_x) Annual Trading Program), 326 IAC 24-6 (Nitrogen Oxides (NO_x) Ozone Season Group 2 Trading Program), and 326 IAC 24-7 (Sulfur Dioxide (SO₂) Group 1 Trading Program), are codified into the SIP at 40 CFR 52.770(c).

² September 13, 2013 memorandum from Stephen D. Page titled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."

Indiana's 2008 ozone infrastructure submission (see 81 FR 53309), to an approval.

II. What Comments Did EPA Receive on the Proposed Rule?

EPA provided a 30-day comment period for the May 22, 2019, proposed rule. During the comment period, we received one anonymous comment objecting to the proposed action. The adverse comment is summarized and addressed below.

Comment: EPA can't support finalizing action on infrastructure elements that are based on a FIP. CAA section 110(a)(2)(D) states that SIPs shall "contain adequate provisions...." This language means that the requirements under section 110(a)(2)(D) must be contained in the SIP and can't be met by a FIP. EPA should disapprove Indiana's infrastructure SIP.

Response: The commenter's premise is incorrect in that the State of Indiana is meeting its prong 4 obligations through a fully approved regional haze SIP, not a FIP. The prong 4 infrastructure SIP element addressed in this action is contained in Section 110(a)(2)(D)(i)(II), which requires a state's implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA. EPA issued guidance on infrastructure SIPs in a September 13, 2013 memorandum from Stephen D. Page, titled,

"Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (2013 Guidance). The 2013 Guidance lays out how a state's infrastructure SIP may satisfy prong 4. EPA explained that one way a state may satisfy prong 4 is via confirmation that the state has a fully approved regional haze SIP.

EPA's RHR, codified at 40 CFR 51.308 and 51.309, specifically requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. The RHR further specifies that participation by a state's EGUs in a CSAPR trading program for a given pollutant - either a CSAPR Federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision - qualifies as a BART alternative for those EGUs for that pollutant. See 40 CFR 51.308(e)(4). Therefore, consistent with the RHR and the 2013 Guidance, a state's regional haze SIP can be fully approved if a state is meeting the BART requirement through the implementation of a CSAPR FIP. In this case, Indiana has replaced its former

reliance on CAIR with a new SIP that relies on CSAPR to meet certain outstanding regional haze requirements. EPA is approving that SIP in this action and is withdrawing the FIP it had previously promulgated for Indiana to provide for reliance on CSAPR (see 77 FR 33654). Whether a state is subject to a CSAPR FIP or has replaced that FIP with a SIP to satisfy its obligations under prongs 1 and 2 of section 110(a)(2)(D)(i)(I) (together generally known as the “good neighbor provision”) is not relevant to the question at hand regarding *prong 4* obligations. Indiana has appropriately adjusted its regional haze SIP to rely on CSAPR to meet certain regional haze obligations, and this is what allows EPA to fully approve the State’s regional haze SIP. Having a fully approved regional haze SIP, as recognized in the 2013 Guidance, allows EPA to conclude that the State’s prong 4 obligations are therefore also met.

Regardless, contrary to commenter’s assertion, the State has in fact also already replaced its CSAPR FIP with a CSAPR SIP. On December 17, 2018, EPA approved Indiana’s State CSAPR trading program regulations for annual NO_x, annual SO₂, and ozone season NO_x emissions to replace EPA’s Federal CSAPR trading program regulations for these emissions from Indiana units (83 FR 64472). We found that Indiana’s trading program is integrated with and is substantively identical to the Federal

trading program. Therefore, EPA's full approval of Indiana's regional haze SIP, which provides the basis of EPA's approval of Indiana's prong 4 elements, relies on the State's integrated CSAPR state trading program, not a FIP as commenter asserts.

III. What Action is EPA Taking?

EPA is taking the following actions: (1) approving the portion of Indiana's November 27, 2017 SIP submittal seeking to change from reliance on CAIR to reliance on CSAPR for certain regional haze requirements; (2) converting EPA's limited approval/limited disapproval of Indiana's January 14, 2011 and March 10, 2011 regional haze SIP to a full approval; (3) withdrawing the FIP provisions that address the limited disapproval; (4) approving the visibility prong of Indiana's infrastructure SIP submittals for the 2012 and 2006 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS; and (5) converting EPA's disapproval of the visibility portion of Indiana's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval

IV. Statutory and Executive Order Reviews.

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

F. 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.

G. 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. There are no Indian reservation lands in Indiana. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

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.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

M. Congressional Review Act

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).

N. Judicial Review

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Particulate matter, Regional haze, Reporting
and recordkeeping requirements, Sulfur oxides, Visibility,
Volatile organic compounds.

Dated: August 28, 2019.

Andrew R. Wheeler,
EPA Administrator.

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 (e) is amended by revising the entries for "Regional Haze Plan," "Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM_{2.5} NAAQS," "Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS," "Section 110(a)(2) Infrastructure Requirements for the 2010 NO₂ NAAQS," "Section 110(a)(2) Infrastructure Requirements for the 2010 SO₂ NAAQS," and "Section 110(a)(2)(D) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA--APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Regional Haze Plan	11/27/2017	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	Full Approval
*	*	*	*
Section 110(a)(2) Infrastructure	10/20/2009, 6/25/2012,	[insert the date of publication in	Full Approval

Requirements for the 2006 24-Hour PM _{2.5} NAAQS	7/12/2012, 5/22/2013, and 11/27/2017	the Federal Register , [Insert Federal Register citation]	
* * * *			
Section 110(a) (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS	12/12/2011 and 11/27/2017	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	Full Approval
Section 110(a) (2) Infrastructure Requirements for the 2010 NO ₂ NAAQS	1/15/2013 and 11/27/2017	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	Full Approval
Section 110(a) (2) Infrastructure Requirements for the 2010 SO ₂ NAAQS	5/22/2013 and 11/27/2017	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	All elements have been addressed except: 110(a) (2) (D) (i) (I)
Section 110(a) (2) (D) Infrastructure Requirements for the 2012 PM _{2.5} NAAQS	6/10/2016 and 11/27/2017	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	All elements have been addressed except: 110(a) (2) (D) (i) (I)
* * * *			

[FR Doc. 2019-19189 Filed: 9/5/2019 8:45 am; Publication Date: 9/6/2019]