

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2015-0074; FRL-9953-14-Region 5]

**Air Plan Approval; Indiana; Temporary Alternate Opacity Limits for American Electric Power, Rockport**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Indiana State Implementation Plan (SIP), authorizing temporary alternate opacity limits (TAOLs) at the American Electric Power, Rockport (AEP Rockport) facility during periods of boiler startup and shutdown. This action is consistent with the Clean Air Act (CAA), the Indiana SIP, and EPA policy regarding emissions during periods of startup and shutdown. Indiana has provided an air quality analysis demonstrating that this revision will continue to protect the applicable National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM<sub>2.5</sub>) in Spencer County, Indiana.

**DATES:** This final rule is effective on October 31, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0074. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson

Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

**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 for this action?
- II. What is EPA’s response to comment?
- III. What action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. What is the background for this action?**

EPA is approving into the Indiana SIP TAOLs for AEP Rockport Units #1 and Unit #2, which apply only during narrowly-drawn periods of boiler startup and shutdown. These two identical 1,300-megawatt coal-fired boilers are each equipped with an electrostatic precipitator (ESP) to control PM<sub>2.5</sub> emissions.

More specifically, 326 Indiana Administrative Code (IAC) 5-1-8 authorizes AEP Rockport to exceed the applicable SIP opacity limit only under the following circumstances: (1) During startup, for a period not to exceed two hours (twenty six-minute averaging periods), or until the flue gas temperature reaches 250 degrees Fahrenheit at the ESP inlet, whichever occurs first; and (2) during shutdown, once the flue gas temperatures has dropped below 250 degrees Fahrenheit at the ESP inlet, for a period not to exceed one and one-half hours (fifteen six-minute averaging periods).

EPA proposed to approve these alternate limits as revisions to Indiana SIP on December 28, 2015 (80 FR 80719). In this action, EPA is responding to comments submitted in response to its proposal and approving the AEP Rockport TAOLs. This is because they meet the criteria contained in Indiana SIP rule 326 IAC 5-1-3(d) as an appropriate method in determining alternative limits for facilities during startup and shutdown periods. These limits are also consistent with the CAA and applicable EPA policy. As discussed in EPA’s proposal, AEP Rockport has met all of these criteria.

EPA has also previously approved TAOLs for 22 other Indiana power plants, all of which are controlled with ESPs (67 FR 46589, July 16, 2002). These TAOLs contained similar limits, and EPA’s basis for approval was analogous. The approach taken by Indiana in establishing all of these TAOLs is also consistent with section 110 of the CAA and the criteria contained in EPA’s September 20, 1999 guidance, “State Implementation Plans: Policy Regarding Excess Emissions

During Malfunctions, Startup, and Shutdown.”

As discussed in the proposal, EPA has evaluated Continuous Opacity Monitoring System (COMS) data from the AEP Rockport facility and conducted air dispersion modeling in the surrounding area. The COMS data showed that, between 2009 and 2013, AEP’s emissions were in compliance with the SIP opacity rule 99.81 percent of the time. Conversely, AEP’s emissions exceeded the opacity standards just 0.19 percent of the time, which includes the startup and shutdown periods covered by the TAOL.

After EPA received public comments in response to the proposal, the Indiana Department of Environmental Management (IDEM) performed an additional air quality analysis in response to specific comments. AEP provided a revised emission profile for PM describing hourly emissions during a 24-hour period, including a startup event, in which the ESP would be entirely shut down during hours 9 and 10. IDEM made the conservative assumption that all of the boilers’ PM<sub>10</sub> emissions were 100 percent PM<sub>2.5</sub>. The new analysis also considered two scenarios, in which one boiler is starting up while the other boiler is either not operating, or operating at its full, steady rate. Both boilers at Rockport exhaust through a common stack. The two scenarios represent the stack exhaust and dispersion rates for a boiler startup/shutdown event. IDEM modeled one scenario which assumed that the ESP is completely offline for the two hours of highest oil and coal combustion.

IDEM’s modeling followed EPA’s guidance in 40 CFR part 51, appendix W, using the current version of the AERMOD modeling system, over a full receptor grid, with five years of recent surface meteorological data from Evansville, Indiana (2010-2014). IDEM also included background from the nearby Dale monitor, in response to Sierra Club comments. The modeling with the background results yielded a 24-hour PM<sub>2.5</sub> value of 26.06 micrograms per cubic meter (µg/m<sup>3</sup>), which is well below the 2012 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>.

**II. What is EPA’s response to comment?**

EPA received comment letters from AEP and the Sierra Club, both on January 27, 2016.

The AEP comment letter supports the approval of 326 IAC 5-1-8 into the Indiana SIP. Sierra Club’s comments are provided and addressed below.

*Comment:* The commenter stated that the fact that AEP Rockport often does

not meet applicable opacity limitations is not sufficient to demonstrate that it cannot meet these limits. The commenter asserts that there are numerous options that might be effective in reducing emissions during startup and shutdown periods, including revamping plant maintenance practices, installing baghouses after the ESPs to collect uncontrolled PM, and using a startup fuel other than fuel oil.

*Response:* The TAOLs at AEP Rockport are needed during startup and shutdown because of temperature limitations of the ESP, which has lowered efficiency at times when temperatures are below 250 degrees. (See 67 FR 46589, July 16, 2002). In addition, AEP Rockport has provided data showing that during periods of low temperature when the control technology cannot efficiently control particulates, there may be violations of the SIP opacity limits. During normal operations, however, emission limits are met. The COMs data submitted by AEP Rockport demonstrate that it has operated in a manner consistent with good air pollution control and maintenance practices. The data show that, between 2009 and 2013, the facility was in compliance 99.81 percent of the time, and exceeded the opacity standards just 0.19 percent of the time. This includes the startup and shutdown periods covered by the TAOL.

The commenter suggests that other control devices should be added to the facility, or that there should be a fuel switch. EPA disagrees for several reasons. First, considering additional controls or changes in fuel is not a criterion in the Indiana SIP for evaluating the approvability of a TAOL. In addition, even if AEP Rockport were to add or modify its control such as by adding a fabric filter (baghouse), similar technical issues could also occur during the low-temperature, low-flow scenario of startups and shutdowns.

*Comment:* The commenter stated that the fact that AEP Rockport often meets applicable opacity limitations during startup and shutdown proves that it can meet these limits. To support this claim, the commenter cites opacity records from the facility on two specific dates in August 1999 in which the opacity did not exceed 40 percent during one startup event and one shutdown event. While conceding that these records also show violating emissions during startups and shutdowns on other occasions, the commenter further notes that the same records show that the facility was also able to comply with the opacity limits during startups and shutdowns as recently as last year.

*Response:* Because AEP Rockport often meets its limits speaks to the fact that it currently operates the controls in a fashion that is consistent with the TAOL approval criterion of maintaining and operating controls in a way to minimize emissions. AEP Rockport's control system also operates effectively during normal operations, enabling it to meet its opacity limitations. As explained in EPA's proposal, the need for a TAOL occurs only during startup and shutdown periods—when ESP effectiveness is hampered by temperature (See 67 FR 46589, July 16, 2002).

AEP Rockport's COM data from 2001 to 2004, and 2007 to 2013, indicate opacity exceedances during startup and shutdown periods, which shows this has been a long-running technical issue. EPA has also reviewed the opacity exceedance report summary for 2007 to 2013. It shows that AEP Rockport averaged 2 startups per year and 4.7 shutdowns per year that exceeded the opacity limitations.

There are aspects of ESP operation that cannot be predicted or controlled during unit startups. Therefore, it is impractical to set an opacity limitation during startup and shutdown periods, particularly given the noted history of limited exceedances and the potential for more irregular opacity episodes. Given that EPA expects SIP compliance 100 percent of the time, the fact that a source may "often" meet applicable emission limits is not sufficient.

*Comment:* The commenter stated that the air quality demonstration made in 2001 or 2004 is obsolete due to changing conditions that impact opacity compliance at the AEP Rockport. The commenter further asserted that the documents AEP submitted in support of its TAOL petition are outdated and fail to satisfy the requirements in 326 IAC 5-1-3-(d)(2)(B).

*Response:* The requirements of 326 IAC 5-1-3(d)(2)(B) were fulfilled for the AEP Rockport facility with the information provided by Indiana in 2015. This is current information, as Indiana evaluated the AEP Rockport TAOLs in 2014. The current data for AEP Rockport show it operates in manner that minimizes opacity emissions during both normal operation and during startup and shutdown periods.

AEP's updated COMs data, which reflects maintenance changes, upgrades, retrofits, or alterations at the facility, still records exceedances during some start-up and shutdown events during 2009 through 2013. This data which accounts for recent changes in conditions shows that there is an

ongoing technical issue with the ESP temperature limitations during start-up and shutdowns that necessitates the TAOLs.

*Comment:* The commenter stated that the 2004 modeling does not address the current NAAQS. The Indiana SIP requires the owner or operator to demonstrate the TAOL will not impact the maintenance of the NAAQS. The commenter asserted that AEP Rockport's 2004 demonstration is clearly inadequate in that it does not address subsequently-adopted PM NAAQS, because the demonstration did not address the 2012 24-hour and annual PM<sub>2.5</sub> NAAQS.

*Response:* The submission by Indiana contained both 2004 and updated 2013 modeling. The modeling provided to EPA for SIP approval included an analysis of both PM<sub>10</sub> and PM<sub>2.5</sub>. The analysis used a conservative assumption that 100 percent of PM<sub>10</sub> equals the PM<sub>2.5</sub> concentrations emitted. EPA concurred with this analysis, which further showed that the TAOL would not interfere with the NAAQS for fine particulate matter.

In addition, in response to the comment, Indiana performed and provided EPA with an updated AERMOD modeling analysis. The modeling shows that the PM<sub>2.5</sub> NAAQS should remain protected in Spencer County, Indiana with the TAOLs in place. More specifically, the results yielded a 24-hour PM<sub>2.5</sub> value of 26.06 µg/m<sup>3</sup>, which is well below the 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>. Indiana did not address the annual PM<sub>2.5</sub> NAAQS, as the TAOL is only intended to address short-term situations. The 24-hour PM<sub>2.5</sub> NAAQS protects public health in this scenario. EPA also considered the 2012 NAAQS, and evaluated modeled concentrations from the TAOLs, using an hourly value of 1.59 µg/m<sup>3</sup> from the modeled scenario that would best represent a contribution to an annual average. EPA determined that the modeled annual average combined with background concentrations (for current monitored data of 10.1 µg/m<sup>3</sup> for 2013–2015 period, and 9.3 for the current annual period) would be less than the 2012 PM<sub>2.5</sub> NAAQS of 12.0 µg/m<sup>3</sup>.

*Comment:* The commenter stated that the 2004 modeling assumes PM emission will be controlled in ways the TAOL does not require. More specifically, AEP Rockport assumed that its ESPs would be partially energized and reducing particulate matter emissions, albeit at only 60 percent efficiency. Rockport's operating permit excuses it from running the ESPs during startup and shutdown. The emissions rate both Indiana and AEP Rockport

used is based on the assumption that AEP Rockport will take steps to minimize opacity that are not required by law.

*Response:* EPA believes that the modeling done in support of the TAOL is an appropriate representation of the impact of the TAOL on the NAAQS. The parameters used in the modeling are consistent with EPA SSM guidance and rules (see, e.g., 80 FR 33840), and reflect the operations at the facility, because Indiana has found through review of the reported data that AEP Rockport's ESP typically provides 75 percent control efficiency or more during startup.

It should also be noted that AEP Rockport is subject to other rules that limit its emissions, such as the Mercury and Air Toxics (MATS) rule (40 CFR part 63, subpart UUUUU). Controlling PM emissions under the MATS rule will further limit the opacity from the AEP Rockport units. Indiana's analysis without ESP control still shows the air quality will be protected. Therefore, EPA believes that the assumption of 60 percent efficiency in the modeling is conservative, and shows that the NAAQS would be protected at a level well below the standard.

*Comment:* The commenter stated that the 2013 modeling is unrealistic and retains flaws from the 2004 modeling. Some of the key modeling assumptions that Indiana used are unrealistic. These assumptions cut in both directions: Some overestimate air quality impact and some underestimate air quality impact. Indiana assumed that there was no background PM<sub>2.5</sub> concentration. Indiana's justifications for using a zero background PM concentration do not withstand scrutiny. Assuming zero background concentration for PM<sub>2.5</sub> produces an air quality modeling result that cannot be relied upon to show NAAQS compliance. The 2013 annual mean for PM<sub>2.5</sub> at the Dale, Spencer County, Indiana monitor was 10.20 µg/m<sup>3</sup>. Indiana's modeling yielded an eighth high 24-hour PM<sub>2.5</sub> value of 22 µg/m<sup>3</sup>. Even though the methodology for calculating these values is very different, adding them yields a total of 32.2 µg/m<sup>3</sup>.

*Response:* The commenter notes in its own analysis that the modeling, with background concentration, still yield results that are below the standard of 35 µg/m<sup>3</sup>.

The revised modeling analysis by Indiana addressed the concerns raised by the commenter. Background data was taken from the Dale monitor in Spencer County, Indiana. AEP Rockport is also in Spencer County, Indiana, about 20 miles from the Dale monitor. The latest three years of monitoring data from

2013–2015 were used. The background value of 23 µg/m<sup>3</sup> does include the expected impact from AEP Rockport's startup and shutdown periods, as no adjustment to the data was made. Thus, both Indiana and EPA considered a conservative background concentration in their evaluations of the AEP Rockport TAOLs.

Indiana's 2013 modeling is conservative in several additional ways. The dispersion modeling used averaged stack temperatures and flow rates in the startup process (which were not from the same hour the emissions value came from). Using the good engineering practice stack height of 220.7 m, instead of the actual 272.5 m stack height, also leads to a conservative estimate of dispersion and, therefore, conservatively high concentration results. The analysis used a cold-unit startup, which is expected to produce more opacity than a warm-unit startup. (A warm-unit startup is when the boiler is still warm, a scenario that could come from frequent startups and shutdowns.) Indiana used coarse particulate matter (PM<sub>10</sub>) emission rates in its modeling analysis, making the conservative assumption that those emissions were 100 percent PM<sub>2.5</sub>. Indiana compared the model result to the 24-hour PM<sub>2.5</sub> standard and determined that the NAAQS were protected.

A scenario considering two hours of uncontrolled emissions during startup gave a maximum concentration of 3.06 µg/m<sup>3</sup>. Adding in the background concentration yields a total value of 26.06 µg/m<sup>3</sup>. A second scenario was considered with one unit starting up while the other unit is in normal operation. This scenario yields a total concentration of 24.59 µg/m<sup>3</sup>. The higher stack temperature and greater flow rate increase the dispersion characteristics leading to the lower concentration. Thus, the first scenario provides a worst-case analysis with a background concentration and no ESP operation during startup, and it still demonstrates attainment of the 24-hour PM<sub>2.5</sub> NAAQS.

*Comment:* The commenter stated that Indiana has not demonstrated that this TAOL is needed and justifiable, as required by 326 IAC 5–1–3(d)(2). The commenter noted that the Indiana SIP requires the owner to demonstrate that a particular TAOL is needed and justifiable during periods of startup and shutdown. The TAOL should be narrowly tailored and all steps must be taken to minimize emissions during startup and shutdown.

*Response:* The criteria for demonstrating that a TAOL is needed and justifiable are provided in SIP rule

326 IAC 5–1–3(d)(2). As discussed above, the need in this case is supported by both the COMs data showing exceedances and the limitations of the technology due to low temperatures specific to startup and shutdown.

The AEP Rockport TAOLs also meet the criteria contained in EPA's SSM guidance and rules (see, e.g., 80 FR 33840). The TAOLs are narrowly tailored, as they apply only to Rockport Unit 1 and Unit 2. They also align the previously approved Indiana TAOLs as it is a coal-fired utility boiler controlled with an ESP. The data provided on previous startups and shutdowns for both units indicated the TAOLs were set properly to minimize emissions during startup and shutdown. AEP Rockport has satisfied the criteria for approval. Further, the AEP Rockport startup and shutdown TAOLs are consistent with the previously approved TAOLs at other similar Indiana facilities (See 67 FR 46589, July, 16, 2002). The TAOLs for AEP Rockport were also tailored specifically to the facility using monitored COM data to determine opacity limits that were appropriate given the operational limitations of the specific parameters on the ESP for AEP Rockport. AEP Rockport has demonstrated that the PM<sub>2.5</sub> NAAQS and thus the area's air quality will remain protected. The reports on the startups and shutdown do show the periods when the current opacity limitations are exceeded occurred during 14 startups and 33 shutdowns from 2007 to 2013, which is an average of 2.0 startup and 4.7 shutdown exceedances per year. Just one startup (2.1 hours) and two shutdowns (1.7 and 2.0 hours) during 2007 to 2013 exceeded the proposed TAOLs.

The air quality analysis of the TAOLs shows that the 24-hour PM<sub>2.5</sub> NAAQS is protected, and EPA's analysis of the annual standard based on the modeling provided supports that the annual PM<sub>2.5</sub> standard is protected. Compliance with this standard protects the public health from short-term events such as startups and shutdowns.

*Comment:* The proposed TAOLs include no upper limits on opacity during the specified timeframe. As such, they could potentially allow extremely high opacity scenarios. There is no concrete restriction on how many times AEP Rockport may startup or shutdown each unit in a year, or even in a week. The combination of these two events raises the potential for serious impacts on ambient air quality.

AEP Rockport has not demonstrated it requires a wholesale exemption from numerical opacity limits when the TAOL would apply. None of the opacity

records show opacity reaching levels near 100 percent for two hours during a startup. AEP assumed the ESPs would run at 60 percent efficiency before the flue gas temperature reaches 250 °F. Furthermore, AEP Rockport claimed that 60 percent control efficiency was a low estimate. If true, that means AEP Rockport could partially control its opacity during the startup and shutdown periods. The TAOLs simply grants AEP Rockport an unneeded, unjustified free pass during the specified time period.

*Response:* EPA agrees that the data indicates opacity does not approach 100 percent opacity. The opacity readings vary in time and opacity level, which makes setting numerical opacity limitations impractical. While there is not a percent opacity limit, the TAOL does provide meaningful constraints of time and temperature that the facility must follow that limits the emissions during startup and shutdowns. The TAOL for unit startup is only allowed until the exhaust temperature reaches 250 °F at the ESP inlet, up to a maximum of 20 six-minute averaging periods (2 hours). The TAOL for unit shutdown begins when the exhaust temperature declines below 250 °F at the ESP inlet and goes for up to 15 six-minute averaging periods (1.5 hours).

### III. What action is EPA taking?

EPA is approving the addition of the AEP Rockport TAOL to 326 IAC 5–1–8 to the Indiana SIP. The rule provides AEP Rockport Units #1 and Unit #2 with TAOLs under certain circumstances during unit startup and shutdown periods. All available data support that the AEP Rockport TAOLs are set at an appropriate level. The AEP Rockport TAOLs meet the requirements of 326 IAC 5–1–3(d)(2). The AEP Rockport TAOLs also meet the other requirements of 326 IAC 5–1–3(d), as approved into the Indiana SIP.

This action is consistent with the CAA, the Indiana SIP, and EPA policy regarding emissions during periods of startup and shutdown. Indiana has provided an air quality analysis demonstrating that the PM<sub>2.5</sub> NAAQS in Spencer County should continue to be protected with the revision.

### 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. 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 by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup> EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### 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 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);
- 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 (Pub. L. 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 November 29, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

<sup>1</sup>62 FR 27968 (May 22, 1997).

Dated: September 19, 2016.  
**Robert A. Kaplan,**  
*Acting 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 adding an entry under “Article 5. Opacity Regulations” “Rule 1. Opacity Limitations” for 5–1–8 in numerical order to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

**EPA-APPROVED INDIANA REGULATIONS**

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
<b>Article 5. Opacity Regulations Rule 1. Opacity Limitations</b>				
*	*	*	*	*
5–1–8 .....	Site-specific temporary alternate opacity limitations.	12/6/2014	9/30/2016, [insert Federal Register citation].	
*	*	*	*	*

\* \* \* \* \*  
 [FR Doc. 2016–23296 Filed 9–29–16; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 97**

[EPA–HQ–OAR–2015–0500; FRL–9953–30–OAR]

**Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units**

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

**ACTION:** Final rule; notice of data availability (NODA).

**SUMMARY:** Under the Cross-State Air Pollution Rule (CSAPR) trading program regulations, the EPA allocates emission allowances to existing electricity generating units (EGUs) as provided in a notice of data availability (NODA). In the CSAPR Update promulgated earlier this year, the EPA finalized default allocations of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for the control periods in 2017 and subsequent years to existing EGUs in 22 eastern states for which the EPA finalized Federal Implementation Plans (FIPs)—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee,

Texas, Virginia, West Virginia, and Wisconsin. Through this NODA, the EPA is providing notice of the availability of data on these allowance allocations to existing units, as well as the data upon which the allocations are based.

**DATES:** September 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be addressed to Michael Cohen, at (202) 343–9497 or [cohen.michael@epa.gov](mailto:cohen.michael@epa.gov); or Robert Miller, at (202) 343–9077 or [miller.robertl@epa.gov](mailto:miller.robertl@epa.gov). The mailing address for each of these individuals is U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The CSAPR allowance trading programs require affected EGUs to hold emission allowances sufficient to cover their emissions of nitrogen oxides (NO<sub>x</sub>) and/or sulfur dioxide in each control period. In the CSAPR Update for the 2008 ozone National Ambient Air Quality Standards (NAAQS), the EPA established new emissions budgets for ozone season NO<sub>x</sub> emissions in 2017 and subsequent years for 22 eastern states and promulgated FIP provisions requiring affected EGUs in those states to participate in the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program.<sup>1</sup> Beginning with the 2018 control period, each covered state

generally has the option to determine how the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances in its state emissions budget should be allocated among the state’s EGUs through a State Implementation Plan (SIP) revision.<sup>2</sup> However, for the 2017 control period, and by default for subsequent control periods in situations where a state has not provided the EPA with the state’s own allocations pursuant to an approved SIP revision, the allocations are made by the EPA.

In the case of units that commenced commercial operations before January 1, 2015, termed “existing” units for purposes of this trading program, the EPA determined default allocations for all control periods in the CSAPR Update rulemaking, according to a methodology finalized in the rulemaking but not included in the regulatory text.<sup>3</sup> Through this NODA, the EPA is providing notice of the availability of unit-level default allocations of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for EGUs that commenced commercial operation before January 1, 2015, as required by the CSAPR regulations.<sup>4</sup> The data are contained in an Excel spreadsheet titled “Unit-Level Allocations and Underlying Data for the

<sup>2</sup> See 40 CFR 52.38 and 52.39.

<sup>3</sup> See CSAPR Allowance Allocations Final Rule TSD, available at <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>.

<sup>4</sup> See 40 CFR 97.811(a)(1). The approach of allocating emission allowances to existing EGUs as provided in a NODA was established in the original CSAPR and was unchanged in the CSAPR Update. See, e.g., 40 CFR 97.511(a)(1).

<sup>1</sup> See Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (September 7, 2016), available at <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>.