
40 C.F.R. § 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) *NO_x Annual emissions—(1) General requirements.* The CSAPR NO_x Annual Trading Program provisions set forth in subpart AAAAA of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO_x) for sources meeting the applicability criteria set forth in subpart AAAAA, except as otherwise provided in this section.

(2) *Applicability of CSAPR NO_x Annual Trading Program provisions.* (i) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

(ii) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

(3) *State-determined allocations of CSAPR NO_x Annual allowances for 2016.* A State listed in paragraph (a)(2) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_x Annual allowance allocation provisions replacing the provisions in § 97.411(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016, a list of CSAPR NO_x Annual units and the amount of CSAPR NO_x Annual allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and that commenced commercial operation before January 1, 2010;

(ii) The total amount of CSAPR NO_x Annual allowance allocations on the list must not exceed the amount, under § 97.410(a) of this chapter for the State and the control period in 2016, of the CSAPR NO_x Annual trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart AAAAA of part 97 of this chapter;

(v) Provided that:

(A) By October 17, 2011, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (a)(3)(i) through (iv) of this section by April 1, 2015; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (a)(3)(v)(A) of this section by April 1, 2015.

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_x Annual Trading Program.* A State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart AAAAA of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

(i) The State may adopt, as CSAPR NO_x Annual allowance allocation or auction provisions replacing the provisions in §§ 97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_x Annual allowances, and may adopt, in addition to the definitions in § 97.402 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_x Annual allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Annual allowances for any such control period not exceeding the amount, under §§ 97.410(a) and 97.421 of this chapter for the State and such control period, of the CSAPR NO_x Annual trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_x Annual allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_x Annual allowances for any such control period to any CSAPR NO_x Annual units covered by § 97.411(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_x Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 1 to this paragraph;

Table 1 to Paragraph (a)(4)(i)(B)

Year of the control period for which CSAPR NO _x Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.

2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_x Annual allowances for any such control period to any CSAPR NO_x Annual units covered by §§ 97.411(b)(1) and 97.412(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_x Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (a)(4)(i)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart AAAAA of part 97 of this chapter;

(ii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (a)(4)(i) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (a)(4)(i)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (a)(4)(i) of this section.

(5) *Full SIP revisions adopting State CSAPR NO_x Annual Trading Programs.* A State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_x Annual Trading Program set forth in §§ 97.402 through 97.435 of this chapter, except that the SIP revision:

(i) May adopt, as CSAPR NO_x Annual allowance allocation or auction provisions replacing the provisions in §§ 97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_x Annual allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Annual allowances for any such control period not exceeding the amount, under §§ 97.410(a) and 97.421 of this chapter for the State and such control period, of the CSAPR NO_x Annual trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_x Annual allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_x Annual allowances for any such control period to any CSAPR NO_x Annual units covered by § 97.411(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_x Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 2 to this paragraph;

Table 2 to Paragraph (a)(5)(i)(B)

Year of the control period for which CSAPR NO _x Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_x Annual allowances for any such control period to any CSAPR NO_x Annual units covered by §§ 97.411(b)(1) and 97.412(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_x Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (a)(5)(i)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart AAAAA of part 97 of this chapter;

(ii) May adopt, in addition to the definitions in § 97.402 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_x Annual allowance allocation or auction provisions adopted under paragraph (a)(5)(i) of this section;

(iii) May substitute the name of the State for the term “State” as used in subpart AAAAA of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.402 through 97.435 of this chapter; and

(iv) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.402 through 97.435 of this chapter and must not include the provisions in §§ 97.411(b)(2) and (c)(5)(iii), 97.412(b), and 97.421(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(v) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.402 (definitions of “common designated representative”, “common designated representative's assurance level”, and “common designated representative's share”), 97.406(c)(2), and 97.425 of this chapter and the portions of other provisions of subpart AAAAA of part 97 of

this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(vi) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (a)(5)(i) through (iv) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (a)(5)(i)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (a)(5)(i) of this section.

(6) *Withdrawal of CSAPR FIP provisions relating to NOX annual emissions.* Except as provided in paragraph (a)(7) of this section, following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section for sources in the State and Indian country within the borders of the State subject to the State's SIP authority, the provisions of paragraph (a)(2)(i) of this section will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(7) *Continued applicability of certain federal trading program provisions for NOX annual emissions.* (i) Notwithstanding the provisions of paragraph (a)(6) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR NO_x Annual Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart AAAAA of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

- (A) The definitions in § 97.402 of this chapter;
- (B) The provisions in § 97.410(a) of this chapter (concerning in part the amounts of the new unit set-asides);
- (C) The provisions in §§ 97.411(b)(1) and 97.412(a) of this chapter (concerning the procedures for administering the new unit set-asides), except where the State allocates or auctions CSAPR NO_x Annual allowances under an approved SIP revision;

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