
TITLE 326 AIR POLLUTION CONTROL DIVISION**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #16-209

CROSS-STATE AIR POLLUTION RULE AND CLEAN AIR INTERSTATE RULE REPEAL**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 24](#) and [326 IAC 26-1-5](#) concerning the federal Cross-State Air Pollution Rule (CSAPR) and the CSAPR Update Rule for the 2008 Ozone National Ambient Air Quality Standards. This rulemaking will also repeal the Clean Air Interstate Rule (CAIR) at [326 IAC 24-1](#), [326 IAC 24-2](#), and [326 IAC 24-3](#). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 1, 2016, Indiana Register (DIN: [20160601-IR-326160209FNA](#)).

CITATIONS AFFECTED: [326 IAC 24-1](#); [326 IAC 24-2](#); [326 IAC 24-3](#); [326 IAC 24-5](#); [326 IAC 24-6](#); [326 IAC 24-7](#); [326 IAC 26-1-5](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-17-3-1](#); [IC 13-17-3-4](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The Clean Air Act contains requirements concerning the transport of air pollution across state boundaries. Often referred to as good neighbor provisions, states are required to reduce emissions that cross state lines and affect neighboring states. CSAPR was published by the United States Environmental Protection Agency (U.S. EPA) on August 8, 2011 (76 FR 48208), and the CSAPR Update Rule for the 2008 Ozone National Ambient Air Quality Standards was published on October 26, 2016 (81 FR 74504). CSAPR requires states in the eastern half of the United States, including Indiana, to significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particulate matter (PM_{2.5}) pollution in other states. CSAPR includes a process for determining each upwind state's responsibility to protect downwind air quality. Each time the National Ambient Air Quality Standards (NAAQS) are changed, U.S. EPA will apply this process and determine if interstate pollution transport contributes to exceedances of the new standard and whether new emission reductions should be required from upwind states. CSAPR defines what portion of an upwind state's emissions "significantly contribute" to ozone or PM_{2.5} pollution in nonattainment or maintenance areas in downwind states. This definition considers the magnitude of a state's contribution, the air quality benefits of reductions, and the cost of controlling pollution from various sources. Once these obligations are determined, CSAPR requires states to eliminate the portion of their emissions defined as their "significant contribution" by setting a pollution limit, or budget, for each covered state.

CSAPR allows air quality-assured allowance trading among covered sources, utilizing an allowance market infrastructure based on existing, successful allowance trading programs. CSAPR allows sources to trade emission allowances with other sources within the same program in the same or different states, while firmly constraining any emissions shifting that may occur by requiring a strict emission ceiling, or state assurance level, in each state, which will be the budget plus a variability limit. It includes assurance provisions that ensure each state will make the emission reductions necessary to meet the "good neighbor" provision of the Clean Air Act.

CSAPR requires significant reductions in sulfur dioxide (SO₂), nitrogen oxides (NO_x), and ozone season NO_x emissions that react in the atmosphere to form PM_{2.5} and ground-level ozone that are transported long distances. The first phase of compliance was scheduled to begin January 1, 2012, for annual SO₂ and NO_x reductions and May 1, 2012, for ozone season NO_x reductions. The second phase of reductions was scheduled to begin January 1, 2014. Due to court challenges, CSAPR was reinstated in 2015 and the second phase of reductions was delayed until 2017. To speed implementation, U.S. EPA adopted a federal implementation plan (FIP) for each of the states covered by CSAPR. States are encouraged to develop a state implementation plan (SIP) to administer the federal trading programs. A state wanting to operate under a SIP must address interstate transport of pollution. A state may choose a trading program similar to the FIP. If a state chooses a trading program, it may adopt any methodology under which the state allocates or auctions allowances under 40 CFR 52.38 and 40 CFR 52.39.

IDEM is seeking to put in place a SIP to operate the three CSAPR trading programs in Indiana and to handle allocations for the programs starting in 2021. In order to meet federal deadlines so that there is a smooth transition from the FIP to the SIP, IDEM must submit a rule to U.S. EPA for SIP approval by December 1, 2017. This will allow sufficient time for U.S. EPA approval so that allowances can be recorded pursuant to the SIP in

2018. A SIP will ensure that Indiana meets its transport requirements for the 1997 PM_{2.5} NAAQS and 2008 Ozone Standard. Demonstrating compliance with transport requirements is a necessary part of receiving approval for infrastructure SIPs that are due to U.S. EPA with each new NAAQS revision. A CSAPR SIP will also provide a mechanism to implement CSAPR with more flexibility as affected sources grow or new units come on-line. IDEM has developed draft rule language that repeals CAIR and establishes three trading programs for SO₂, NO_x, and the NO_x ozone season under CSAPR into new state rules at [326 IAC 24-5](#), [326 IAC 24-6](#), and [326 IAC 24-7](#), respectively. Additionally, the reference to CAIR in the Regional Haze rule at [326 IAC 26-1-5](#) has been replaced with CSAPR. IDEM believes the draft rule addresses issues relevant to the Indiana trading programs without increasing the complexity of the rule. IDEM plans to request SIP approval pursuant to 40 CFR 52.38 and 40 CFR 52.39(f) to correct the Indiana SIP's deficiency and adequately address the interstate transport of pollution that is the basis for the CSAPR FIP.

The draft rule language incorporates the majority of 40 CFR 97, Subparts AAAAA (Annual NO_x), CCCCC (Group 1 SO₂), and EEEEE (NO_x Ozone Season Group 2). The budget included for the NO_x ozone season is the budget that U.S. EPA recently put in place as part of the CSAPR Update Rule for the 2008 Ozone NAAQS. As allowed by U.S. EPA, IDEM did not incorporate the portions of 40 CFR 97, Subparts AAAAA, CCCCC, and EEEEE that provide U.S. EPA with the authority to issue Notices of Data Availability for allowance allocations and new unit set-aside allocation methodology, but instead developed methodologies specific to Indiana. However, U.S. EPA's methodology provided in technical support documents for CSAPR was used as a baseline when developing the draft language. Adjustments were made in the following areas to put forth a program for implementation in Indiana:

Timing of allocations

IDEM has proposed in the draft rule to provide U.S. EPA with two years of allocations for the fourth and fifth control periods after the year in which allocations are made. The initial set of allocations for control periods in 2021 and 2022 will be recorded in 2018. Currently, under the FIP the U.S. EPA released allocations for 2015-2020. U.S. EPA has not stated if they will continue to record allocations in six year blocks. In order to accommodate future uncertainty IDEM chose two year blocks, but is willing to discuss other time frames.

Baseline heat input range

IDEM has proposed draft rule language that establishes a baseline heat look back period (2011-2015) the same as U.S. EPA is using for the NO_x seasonal ozone program under the CSAPR Update Rule for the first allocation cycle. In subsequent allocation cycles, IDEM proposes to calculate heat input years based on the five previous years of available data. IDEM has drafted rule language that allows for the update of heat input years in future allocation year cycles. Currently, U.S. EPA has released allocation data up until 2020. Updating heat input years will provide for a smoother allocation of allowances as units stop operating and eventually stop receiving allowances. Indiana will be able to allocate those allowances directly to units that are still operating instead of waiting to do so as part of the redistribution of new unit set-aside allowances.

Transition of new units to the existing unit baseline

New units are rolled into the existing unit budget once the unit has at least three consecutive years of heat input data. Currently, U.S. EPA has no mechanism for this transition. At some point in the future, it is possible that the new unit set-aside could be oversubscribed without a mechanism to transition new units to the existing unit baseline.

Historic emissions

IDEM has proposed draft rule language that establishes the maximum historic emissions cap using the most recent eight years of data available at the time allocations are determined so that the look back period will change with time. Currently, U.S. EPA uses a static look back period for its allocations through 2020. IDEM also proposed to cap allocations based on judicial consent decrees with limits on SO₂ or NO_x emissions.

Retired units

IDEM has proposed draft rule language to continue to allocate allowances to units that have stopped operating for two consecutive control periods similar to U.S. EPA. IDEM proposed to stop allocating allowances to units in the fifth year after no operation.

Two rounds of allocations under the new unit set-aside

Similar to U.S. EPA's process for distributing allowances from the new unit set-aside, IDEM proposed to have two rounds of allocations. In the first round IDEM will allocate to new units based on emissions in the previous year. In the second round IDEM will allocate to new units that started operating in the control period of the allocation year and will redistribute to existing units any allowances remaining in the set-aside. IDEM requests comments on whether the two step process is important to retain as it does allow for new units to receive allowances for the first year of operation.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule

applies that is not imposed under federal law. Upon SIP approval the rule fully satisfies Indiana's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM_{2.5} NAAQS in any other state. IDEM's methodology may result in potential individual impacts not currently imposed under the FIP, and at this time IDEM cannot determine if or when the proposed methodology may create such a scenario.

Potential Fiscal Impact

This rulemaking will not have a fiscal impact beyond what regulated entities would be subject to under current federal law. U.S. EPA estimated in the 2011 CSAPR fiscal impact analysis that the projected annual costs would be \$800 million for the affected CSAPR states, along with the roughly \$1.6 billion per year in capital investments already underway as a result of CAIR. U.S. EPA has estimated that the CSAPR Update Rule for the NO_x ozone season will cost an additional \$68 million to regulated entities. IDEM selected an allowance allocation methodology similar to what is currently in use by U.S. EPA; this may result in some cost impact changes to individual sources, but should not result in increased costs to control overall state emissions compared to what is currently required by U.S. EPA by way of the FIP. Fixing typographical errors, inconsistencies, and organizational issues to streamline and simplify the language, including incorporating reference material, to ensure the rule is in compliance with the Indiana Legislative Services' Administrative Rules Drafting Manual is a necessary component of adopting federal rules into state rules. Clear and updated rules should enhance the ability of sources to comply with requirements.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Lauren Aguilar, Rules Development Branch, Office of Legal Counsel at (317) 234-8559 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 1, 2016, through July 1, 2016, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Tim Rushenberg, Indiana Energy Association (IEA).

Jack F. Alvey, Indiana Municipal Power Agency (IMPA).

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The IEA supports IDEM's interest in adopting a rule that does not increase the complexity of CSAPR. (IEA)

Response: IDEM appreciates IEA's support, and will continue to strive to craft a rule that is customized to the needs of Indiana that does not increase the complexity of CSAPR.

Comment: IEA is opposed to IDEM's adoption of the CSAPR Update Rule at this time. The proposed CSAPR Update Rule has not yet been finalized by U.S. EPA and may be litigated upon finalization. IEA urges IDEM to remove adoption of the CSAPR Update Rule from this rulemaking. (IEA)

Response: IDEM has included the CSAPR Update Rule in this rulemaking as it was finalized by U.S. EPA on September 7, 2016. IDEM believes that it should not speculate on future litigation and their outcomes. Should there be litigation that results in need for a change in the rule, IDEM will address those issues as they occur.

Comment: IMPA strongly encourages IDEM to adopt a rule that incorporates an allowance allocation methodology that is not more stringent than the federal allowance allocation methodology. A SIP is preferred, as the plan would be customized to the state and its affected generating facilities. However, IMPA cannot support a SIP that allocates fewer allowances than the federal plan. (IMPA)

Comment: Any changes to the allocation methodologies included in the Federal CSAPR may create concerns for members of IEA. (IEA)

Response: IDEM has drafted a rule that closely matches the methodologies set forth by U.S. EPA in the FIP. Where IDEM made adjustments, as outlined in the Basic Purpose and Background section, they were made to better meet the needs of Indiana. IDEM has kept the allowance budgets as set forth by U.S. EPA.

Comment: IMPA finds that it is imperative that IDEM's allowance allocation method under CSAPR provide an adequate look back period which may be longer than five years, to ensure that anomalies, such as longer planned outages for, among other things, the installation of environmental control equipment, don't lower a unit's heat input and adversely affect its proportionate share of allowance allocations. (IMPA)

Response: IDEM has drafted rule language that uses a five (5) year look back period the same as U.S. EPA. Additionally, a three (3) year average is taken from within those five (5) years to determine a baseline heat input. This will account for any anomalies. IDEM, like U.S. EPA, believes this look back period is adequate to establish a baseline heat input. IDEM welcomes further discussion on this issue now that the commenter can further evaluate the look back period along with other components of the allocation methodology.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for

specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #16-209 CSAPR adoption and repeal of CAIR
Lauren Aguilar
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to laguilar@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than January 27, 2017. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 24-5](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 24. CROSS-STATE AIR POLLUTION RULE (CSAPR) PROGRAMS

Rule 5. Nitrogen Oxides (NO_x) Annual Trading Program

[326 IAC 24-5-1](#) Applicability and incorporation by reference

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-11-2](#); [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) This rule applies to CSAPR NO_x annual units and CSAPR NO_x annual sources as specified in 40 CFR 97.404*.

(b) The definitions in [IC 13-11-2](#), [326 IAC 1](#), and 40 CFR 97.402* apply throughout this rule. For purposes of this rule, the definition for a term provided in 40 CFR 97.402 controls in any conflict between [326 IAC 1](#) and 40 CFR 97.402.

(c) The following federal provisions are incorporated by reference:

(1) The CSAPR NO_x Annual Trading Program at:

(A) 40 CFR 97.403* through 40 CFR 97.408*; and

(B) 40 CFR 97.413* through 40 CFR 97.435*.

(2) The Indiana NO_x annual variability limit at 40 CFR 97.410(b)(4)*.

(d) When used in 40 CFR as incorporated by this rule, substitute the following:

(1) Delete "State" and insert "Indiana".

(2) Delete "Permitting Authority" and insert "the department".

(3) Delete "40 CFR 97.410(a)" and insert "40 CFR 97.410(a)(4)(iv)". This budget includes any tons in a

new unit set-aside and does not include any tons in a variability limit.

- (4) Delete "40 CFR 97.410(b)" and insert "40 CFR 97.410(b)(4)".
- (5) Delete "40 CFR 97.411(a)(2) and 40 CFR 97.411(b)" and insert "sections 6, 7, and 8 of this rule".
- (6) Delete "40 CFR 97.411" and insert "section 6 of this rule".
- (7) Delete "40 CFR 97.412" and insert "sections 7 and 8 of this rule".

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-5-1](#))

[326 IAC 24-5-2](#) CSAPR NO_x annual trading budget

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 2. The Indiana CSAPR NO_x annual trading budget, in 40 CFR 97.410(a)(4)(iv)*, is available for each control period starting in 2021 and thereafter, apportioned as follows:

- (1) The portion of the budget for existing units is the difference between the trading budget in 40 CFR 97.410(a)(4)(iv)* and the new unit set-aside in 40 CFR 97.410(a)(4)(v)*.
- (2) The portion of the budget for the new unit set-aside is listed in 40 CFR 97.410(a)(4)(v)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-5-2](#))

[326 IAC 24-5-3](#) CSAPR NO_x annual allocation timing

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 3. The department shall allocate CSAPR NO_x annual allowances according to the following schedule:

- (1) By June 1, 2018, the department shall submit to U.S. EPA the existing unit allowance allocations, in accordance with section 6 of this rule, for the control periods in 2021 and 2022.
- (2) By June 1, 2019, and June 1 every two (2) years thereafter, the department shall submit to U.S. EPA the existing unit allowance allocations in accordance with section 6 of this rule, for the control periods four (4) and five (5) years after the applicable deadline for submission under this subdivision.
- (3) By July 1, 2021, and July 1 of each year thereafter, the department shall submit to U.S. EPA the new unit set-aside allowance allocations, in accordance with section 7 of this rule, for the control period in the year of the applicable deadline for submission under this subdivision.
- (4) By January 30, 2022, and January 30 of each year thereafter, the department shall submit to U.S. EPA the new unit set-aside allowance allocations in accordance with section 8 of this rule, for the control period in the previous year of the applicable deadline for submission under this subdivision.

(Air Pollution Control Division; [326 IAC 24-5-3](#))

[326 IAC 24-5-4](#) Public review for existing unit allocations

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 4. By March 1 of each year allocations are made under section 3(1) or 3(2) of this rule, the department shall make the allowance allocations available for public review. The department may adjust each determination if appropriate or necessary to ensure that it is in accordance with this rule.

[326 IAC 24-5-5](#) Baseline heat input and historic emissions

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) For purposes of this rule, an existing unit is a unit with a baseline heat input, in million British thermal units (MMBtu), determined as follows:

(1) If a unit commenced commercial operation prior to January 1, 2016, then the following applies:

(A) For an allowance allocation under section 3(1) of this rule, the baseline heat input is the average of the three (3) highest control period heat inputs in 2011 through 2015.

(B) For an allowance allocation under section 3(2) of this rule, the baseline heat input is the average of the three (3) highest, non-zero control period heat inputs in the five (5) years before the allocation is calculated.

(C) If a unit has only two (2) non-zero heat inputs during the five (5) years before the allocation is calculated, the baseline heat input is the average of those two (2) non-zero control period heat inputs.

(D) If a unit has only one (1) non-zero heat input during the five (5) years before the allocation is calculated, the baseline heat input is that one (1) non-zero control period heat input.

(2) If a unit commenced commercial operation on or after January 1, 2016, and operates each control period during a period of three (3) or more consecutive calendar years, for an allowance allocation under section 3(1) and 3(2) of this rule, the baseline heat input is the average of the three (3) highest, non-zero control period heat input values for the years before the calculation of the allocation, not to exceed five (5) control periods.

(b) The maximum historic emission cap is the maximum NO_x emissions, in tons, that occurred during any control period of the historic emissions period. The historic emissions period is an eight (8) year history for each unit ending from the most recent year of the five (5) years used for the determination of the heat input under subsection (a)(1).

(c) A unit's control period heat input and a unit's total tons of NO_x emissions during a control period under this section must be determined in accordance with 40 CFR 75*.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-5-5](#))

[326 IAC 24-5-6](#) Existing unit allocations and adjustments

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 6. (a) For each control period in 2021 and thereafter, the department shall distribute to all existing units that have a baseline heat input, as determined under section 5 of this rule, the total amount of allowances as listed in section 2(1) of this rule in accordance with this section.

(b) The department shall determine each existing unit's initial allocation by multiplying the existing unit budget listed in section 2(1) of this rule by the ratio of the baseline heat input of the unit to the total amount of baseline heat inputs of all CSAPR NO_x annual units and rounding to the nearest whole allowance.

(c) The allocation to each unit is the lesser of the following, plus any reapportioned allowances:

(1) Initial allocation under subsection (b).

- (2) A cap on emissions pursuant to a federally enforceable judicial consent decree.
- (3) Maximum historic emissions, as determined under section 5(b) of this rule.
- (4) No allowances as determined under subsection (e).

(d) Allowances remaining after the application of subsection (c) are reapportioned as follows, with the resulting allocation value rounded to the nearest whole allowance:

- (1) Remaining allowances are reapportioned to the remaining units whose initial allocation is not limited by the application of the limits in subsection (c)(2) through (c)(4).
- (2) Allocations are apportioned on the same basis as under subsection (b).
- (3) These steps are repeated with each revised allocation distribution until the entire existing unit portion of the budget is allocated.

(e) A unit receives no allowances if the unit does not operate during the control period in two (2) consecutive years as follows:

- (1) Allowances must not be allocated to the unit for the control period in the fifth year after the first year of not operating and in each year after that fifth year.
- (2) If the unit resumes operation, the department must allocate allowances to the unit in accordance with section 7 of this rule until the unit has a baseline heat input under section 5(a)(2) of this rule.

(Air Pollution Control Division; [326 IAC 24-5-6](#))

[326 IAC 24-5-7](#) New unit allocations

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 7. (a) For each control period in 2021 and thereafter, the department shall allocate to all new units, a total amount of allowances as listed in section 2(2) of this rule. For purposes of this rule, new units either:

- (1) commenced operation on or after January 1, 2016, and do not have a baseline heat input as determined under section 5 of this rule; or
- (2) did not receive allowances as determined under section 6(e) of this rule, and operated during the control period immediately preceding the year of allocation.

(b) For each control period in 2021 and thereafter, a separate new unit set-aside is established for Indiana equal to the allowances listed in section 2(2) of this rule. The new unit set-aside may include additional allowances under 40 CFR 97.411(c)(5)*.

(c) The department must determine, for each new unit described in subsection (a), an allocation of allowances for the later of the following control periods and for each subsequent control period:

- (1) The control period starting in 2021.
- (2) The first full control period after the unit commences commercial operation.
- (3) For a unit misallocated allowances under 40 CFR 97.411(c)*, the first control period in which the unit operates in Indiana after operating in another jurisdiction and the unit must not already have been allocated one (1) or more allowances.
- (4) For a unit described in section 6(e) of this rule that resumes operation, the first full control period after the unit resumes operation.

(d) The allocation to each unit for each control period must be an amount equal to the unit's total tons of NO_x emissions during the immediately preceding control period, adjusted by the department under subsection (e).

(e) The department may adjust the allocation of subsection (d) as follows:

- (1) If the amount of allowances in the new unit set-aside for a control period is greater than or equal to the sum under this section, then the department shall allocate the amount of allowances determined for each unit under subsection (d).
- (2) If the amount of allowances in the new unit set-aside for a control period is less than the sum under this section, then the department shall allocate to each unit the amount of the allowances determined

under subsection (d) for the unit, multiplied by the amount of allowances in the new unit set-aside for the control period, divided by the sum under this section, and rounded to the nearest allowance.

(f) The department shall notify each CSAPR designated representative of the amount of allowances allocated under subsections (d) and (e) and submit the amount to U.S. EPA in accordance with section 3(3) of this rule.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-5-7](#))

[326 IAC 24-5-8](#) Unallocated new unit set-aside allowances

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 8. (a) After the completion of the procedures under section 7 of this rule for a control period, if any unallocated allowances remain in a new unit set-aside for the control period, the department shall allocate allowances, as follows:

(1) For each unit described under section 7(a) of this rule, that commenced commercial operation during the period starting January 1 of the year before the year of the control period and ending November 30 of the year of the control period, the department shall determine the positive difference, if any, between the unit's emissions during the control period and the amount of allowances awarded for the unit for the control period.

(2) The department shall determine the sum of the positive differences determined under subdivision (1) and then proceed as follows:

(A) If the amount of unallocated allowances remaining in the new unit set-aside for a control period is greater than or equal to the sum determined under this subdivision, then the department must allocate the amount of allowances determined for each unit under subdivision (1).

(B) If the amount of unallocated allowances remaining in the new unit set-aside for a control period is less than the sum under this subdivision, then the department must allocate to each unit the amount of the allowances determined under subdivision (1), multiplied by the amount of unallocated allowances remaining in the new unit set-aside for the control period, divided by the sum under this clause, and rounded to the nearest whole allowance.

(b) After completion of the procedures under subsection (a) for a control period, if any unallocated allowances remain in the new unit set-aside for the control period, the department shall allocate to each unit that was allocated allowances under section 6 of this rule, and an amount of allowances under the following formula:

$$\text{Unit allowance} = \frac{\text{UA} \times \text{EUA}}{\text{EUB}}$$

Where: Unit allowance is the total allowances allocated to the unit

UA is the total amount of the remaining unallocated allowances in the new unit set-aside

EUA is the unit's allocation under section 7 of this rule for the control period

EUB is the existing unit budget, as listed in section 2(1) of this rule, for the control period, and rounded to the nearest allowance

(c) The department shall notify each CSAPR designated representative of the amount of allowances allocated under subsections (a) and (b) and submit the amount to U.S. EPA in accordance with section 3(4) of this rule.

(Air Pollution Control Division; [326 IAC 24-5-8](#))

SECTION 2. [326 IAC 24-6](#) IS ADDED TO READ AS FOLLOWS:

Rule 6. Nitrogen Oxides (NO_x) Ozone Season Group 2 Trading Program

[326 IAC 24-6-1](#) Applicability and incorporation by reference

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-11-2](#); [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) This rule applies to CSAPR NO_x Ozone Season Group 2 units and CSAPR NO_x Ozone Season Group 2 sources as specified in 40 CFR 97.804*, as added by 81 FR 74627.

(b) The definitions in [IC 13-11-2](#), [326 IAC 1](#), and 40 CFR 97.802*, as added by 81 FR 74622, apply throughout this rule. For purposes of this rule, the definition for a term provided in 40 CFR 97.802 controls in any conflict between [326 IAC 1](#) and 40 CFR 97.802.

(c) The following federal provisions are incorporated by reference:

(1) The CSAPR NO_x Ozone Season Group 2 Trading Program at:

(A) 40 CFR 97.803* through 40 CFR 97.808*, as added by 81 FR 74627; and

(B) 40 CFR 97.813* through CFR 97.835*, as added by 81 FR 74637.

(2) The Indiana NO_x ozone season group 2 trading budget variability limit in 40 CFR 97.810(b)(5)*, as added by 81 FR 74631.

(d) When used in 40 CFR as incorporated by this rule, substitute the following unless otherwise indicated:

(1) Delete "State" and insert "Indiana".

(2) Delete "Permitting Authority" and insert "the department".

(3) Delete "40 CFR 97.810(a)" and insert "40 CFR 97.810(a)(5)(i)". This budget includes any tons in a new unit set-aside and does not include any tons in a variability limit.

(4) Delete "40 CFR 97.810(b)" and insert "40 CFR 97.810(b)(5)".

(5) Delete "40 CFR 97.811(a)(2) and 40 CFR 97.811(b)" and insert "sections 6, 7, and 8 of this rule".

(6) Delete "40 CFR 97.811" and insert "section 6 of this rule".

(7) Delete "40 CFR 97.812" and insert "sections 7 and 8 of this rule".

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-6-1](#))

[326 IAC 24-6-2](#) CSAPR NO_x ozone season group 2 trading budget

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 2. The Indiana CSAPR NO_x ozone season group 2 trading budget, in 40 CFR 97.810(a)(5)(i)*, as added by 81 FR 74631, is available for each control period starting in 2021 and thereafter, apportioned as follows:

(1) The portion of the budget for existing units is the difference between the trading budget in 40 CFR 97.810(a)(5)(i)*, as added by 81 FR 74631, and the new unit set-aside in 40 CFR 97.810(a)(5)(ii)*, as added by 81 FR 74631.

(2) The portion of the budget for the new unit set-aside is listed in 40 CFR 97.810(a)(5)(ii)*, as added by 81 FR 74631.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-6-2](#))

[326 IAC 24-6-3](#) CSAPR NO_x ozone season group 2 allocation timing

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 3. The department shall allocate CSAPR NO_x ozone season group 2 allowances according to the following schedule:

- (1) By June 1, 2018, the department shall submit to U.S. EPA the existing unit allowance allocations, in accordance with section 6 of this rule, for the control periods in 2021 and 2022.
- (2) By June 1, 2019, and June 1 every two (2) years thereafter, the department shall submit to U.S. EPA the existing unit allowance allocations in accordance with section 6 of this rule, for the control periods four (4) and five (5) years after the applicable deadline for submission under this subdivision.
- (3) By July 1, 2021, and July 1 of each year thereafter, the department shall submit to U.S. EPA the new unit set-aside allowance allocations, in accordance with section 8 of this rule, for the control period in the year of the applicable deadline for submission under this subdivision.
- (4) By January 30, 2022, and January 30 of each year thereafter, the department shall submit to U.S. EPA the new unit set-aside allowance allocations in accordance with section 8 of this rule, for the control period in the previous year of the applicable deadline for submission under this subdivision.

(Air Pollution Control Division; [326 IAC 24-6-3](#))

[326 IAC 24-6-4](#) Public review for existing unit allocations

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 4. By March 1 of each year allocations are made under section 3(1) or 3(2) of this rule, the department shall make the allowance allocations available for public review. The department may adjust each determination if appropriate or necessary to ensure that it is in accordance with this rule.

(Air Pollution Control Division; [326 IAC 24-6-4](#))

[326 IAC 24-6-5](#) Baseline heat input and historic emissions

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) For purposes of this rule, an existing unit is a unit with a baseline heat input, in million British thermal units (MMBtu), determined as follows:

- (1) If a unit commenced commercial operation prior to January 1, 2016, then the following applies:
 - (A) For an allowance allocation under section 3(1) of this rule, the baseline heat input is the average of the three (3) highest control period heat inputs in 2011 through 2015.
 - (B) For an allowance allocation under section 3(2) of this rule, the baseline heat input is the average of the three (3) highest, non-zero control period heat inputs in the five (5) years before the allocation is calculated.
 - (C) If a unit has only two (2) non-zero heat inputs during the five (5) years before the allocation is calculated, the baseline heat input is the average of those two (2) non-zero control period heat inputs.
 - (D) If a unit has only one (1) non-zero heat input during the five (5) years before the allocation is calculated, the baseline heat input is that one (1) non-zero control period heat input.
- (2) If a unit commenced commercial operation on or after January 1, 2016, and operates each control period during a period of three (3) or more consecutive calendar years, for an allowance allocation under section 3(1) and 3(2) of this rule, the baseline heat input is the average of the three (3) highest, non-zero control period heat input values for the years before the calculation of the allocation, not to exceed five (5) control periods.

(b) The maximum historic emission cap is the maximum NO_x emissions, in tons, that occurred during

any control period of the historic emissions period. The historic emissions period is an eight (8) year history for each unit ending from the most recent year of the five (5) years used for the determination of the heat input under subsection (a)(1).

(c) A unit's control period heat input and a unit's total tons of NO_x emissions during a control period under this section must be determined in accordance with 40 CFR 75*.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-6-5](#))

[326 IAC 24-6-6](#) Existing unit allocations and adjustments

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 6. (a) For each control period in 2021 and thereafter, the department shall distribute to all existing units that have a baseline heat input, as determined under section 5 of this rule, the total amount of allowances as listed in section 2(1) of this rule in accordance with this section.

(b) The department shall determine each existing unit's initial allocation by multiplying the existing unit budget listed in section 2(1) of this rule by the ratio of the baseline heat input of the unit to the total amount of baseline heat inputs of all CSAPR NO_x ozone season group 2 units and rounding to the nearest whole allowance.

(c) The allocation to each unit is the lesser of the following, plus any reapportioned allowances:

- (1) Initial allocation under subsection (b).
- (2) A cap on emissions pursuant to a federally enforceable judicial consent decree.
- (3) Maximum historic emissions, as determined under section 5(b) of this rule.
- (4) No allowances as determined under subsection (e).

(d) Allowances remaining after the application of subsection (c) are reapportioned as follows, with the resulting allocation value rounded to the nearest whole allowance:

- (1) Remaining allowances are reapportioned to the remaining units whose initial allocation is not limited by the application of the limits in subsection (c)(2) through (c)(4).
- (2) Allocations are apportioned on the same basis as under subsection (b).
- (3) These steps are repeated with each revised allocation distribution until the entire existing unit portion of the budget is allocated.

(e) A unit receives no allowances if the unit does not operate during the control period in two (2) consecutive years as follows:

- (1) Allowances must not be allocated to the unit for the control period in the fifth year after the first year of not operating and in each year after that fifth year.
- (2) If the unit resumes operation, the department must allocate allowances to the unit in accordance with section 7 of this rule until the unit has a baseline heat input under section 5(a)(2) of this rule.

(Air Pollution Control Division; [326 IAC 24-6-6](#))

[326 IAC 24-6-7](#) New unit allocations

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 7. (a) For each control period in 2021 and thereafter, the department shall allocate to all new units, a total amount of allowances as listed in section 2(2) of this rule. For purposes of this rule, new units

either:

- (1) commenced operation on or after January 1, 2016, and do not have a baseline heat input as determined under section 5 of this rule; or
- (2) did not receive allowances as determined under section 6(e) of this rule, and operated during the control period immediately preceding the year of allocation.

(b) For each control period in 2021 and thereafter, a separate new unit set-aside is established for Indiana equal to the allowances listed in section 2(2) of this rule. The new unit set-aside may include additional allowances under 40 CFR 97.811(c)(5)*.

(c) The department must determine, for each new unit described in subsection (a), an allocation of allowances for the later of the following control periods and for each subsequent control period:

- (1) The control period starting in 2021.
- (2) The first full control period after the unit commences commercial operation.
- (3) For a unit misallocated allowances under 40 CFR 97.811(c)*, the first control period in which the unit operates in Indiana after operating in another jurisdiction and the unit must not already have been allocated one (1) or more allowances.
- (4) For a unit described in section 6(e) of this rule that resumes operation, the first full control period after the unit resumes operation.

(d) The allocation to each unit for each control period must be an amount equal to the unit's total tons of NO_x emissions during the immediately preceding control period, adjusted by the department under subsection (e).

(e) The department may adjust the allocation of subsection (d) as follows:

- (1) If the amount of allowances in the new unit set-aside for a control period is greater than or equal to the sum under this section, then the department shall allocate the amount of allowances determined for each unit under subsection (d).
- (2) If the amount of allowances in the new unit set-aside for a control period is less than the sum under this section, then the department shall allocate to each unit the amount of the allowances determined under subsection (d) for the unit, multiplied by the amount of allowances in the new unit set-aside for the control period, divided by the sum under this section, and rounded to the nearest allowance.

(f) The department shall notify each CSAPR designated representative of the amount of allowances allocated under subsections (d) and (e) and submit the amount to U.S. EPA in accordance with section 3(3) of this rule.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-6-7](#))

[326 IAC 24-6-8](#) Unallocated new unit set-aside allowances

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 8. (a) After the completion of the procedures under section 7 of this rule for a control period, if any unallocated allowances remain in a new unit set-aside for the control period, the department shall allocate allowances, as follows:

- (1) For each unit described under section 7(a) of this rule, that commenced commercial operation during the period starting January 1 of the year before the year of the control period and ending November 30 of the year of the control period, the department shall determine the positive difference, if any, between the unit's emissions during the control period and the amount of allowances awarded for the unit for the control period.
- (2) The department shall determine the sum of the positive differences determined under subdivision

(1) and then proceed as follows:

(A) If the amount of unallocated allowances remaining in the new unit set-aside for a control period is greater than or equal to the sum determined under this subdivision, then the department must allocate the amount of allowances determined for each unit under subdivision (1).

(B) If the amount of unallocated allowances remaining in the new unit set-aside for a control period is less than the sum under this subdivision, then the department must allocate to each unit the amount of the allowances determined under subdivision (1), multiplied by the amount of unallocated allowances remaining in the new unit set-aside for the control period, divided by the sum under this clause, and rounded to the nearest whole allowance.

(b) After completion of the procedures under subsection (a) for a control period, if any unallocated allowances remain in the new unit set-aside for the control period, the department shall allocate to each unit that was allocated allowances under section 6 of this rule, and an amount of allowances under the following formula:

$$\text{Unit allowance} = \frac{\text{UA} \times \text{EUA}}{\text{EUB}}$$

Where: Unit allowance is the total allowance allocated to the unit

UA is the total amount of the remaining unallocated allowances in the new unit set-aside

EUA is the unit's allocation under section 7 of this rule for the control period

EUB is the existing unit budget, as listed in section 2(1) of this rule, for the control period, and rounded to the nearest allowance

(c) The department shall notify each CSAPR designated representative of the amount of allowances allocated under subsections (a) and (b) and submit the amount to U.S. EPA in accordance with section 3(4) of this rule.

(Air Pollution Control Division; [326 IAC 24-6-8](#))

SECTION 3. [326 IAC 24-7](#) IS ADDED TO READ AS FOLLOWS:

Rule 7. Sulfur Dioxide (SO₂) Group 1 Trading Program

[326 IAC 24-7-1](#) Applicability and incorporation by reference

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-11-2](#); [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) This rule applies to CSAPR SO₂ Group 1 units and CSAPR SO₂ Group 1 sources as specified in 40 CFR 97.604*.

(b) The definitions in [IC 13-11-2](#), [326 IAC 1](#), and 40 CFR 97.602* apply throughout this rule. For purposes of this rule, the definition for a term provided in 40 CFR 97.602 controls in any conflict between [326 IAC 1](#) and 40 CFR 97.602.

(c) The following federal provisions are incorporated by reference:

(1) The CSAPR SO₂ Group 1 Trading Program at:

(A) 40 CFR 97.603* through 40 CFR 97.608*; and

(B) 40 CFR 97.613* through 40 CFR 97.635*.

(2) The Indiana CSAPR SO₂ group 1 trading budget variability limit in 40 CFR 97.610(b)(2)*.

(d) When used in 40 CFR as incorporated by this rule, substitute the following unless otherwise indicated:

(1) Delete "State" and insert "Indiana".

(2) Delete "Permitting Authority" and insert "the department".

(3) Delete "40 CFR 97.610(a)" and insert "40 CFR 97.610(a)(2)(iv)". This budget includes any tons in a new unit set-aside and does not include any tons in a variability limit.

- (4) Delete "40 CFR 97.610(b)" and insert "40 CFR 97.610(b)(2)".
- (5) Delete "40 CFR 97.611(a)(2) and 40 CFR 97.611(b)" and insert "sections 6, 7, and 8 of this rule".
- (6) Delete "40 CFR 97.611" and insert "section 6 of this rule".
- (7) Delete "40 CFR 97.612" and insert "sections 7 and 8 of this rule".

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-7-1](#))

[326 IAC 24-7-2](#) CSAPR SO₂ group 1 trading budget

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 2. The Indiana CSAPR SO₂ group 1 allowance trading budget, in 40 CFR 97.610(a)(2)(iv)*, is available for each control period starting in 2021 and thereafter, apportioned as follows:

- (1) The portion of the budget for existing units is the difference between the trading budget in 40 CFR 97.610(a)(2)(iv) and the new unit set-aside in 40 CFR 97.610(a)(2)(v)*.
- (2) The portion of the budget for the new unit allocation set-aside is listed in 40 CFR 97.610(a)(2)(v)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-7-2](#))

[326 IAC 24-7-3](#) CSAPR SO₂ group 1 allocation timing

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 3. The department shall allocate CSAPR SO₂ group 1 allowances according to the following schedule:

- (1) By June 1, 2018, the department shall submit to U.S. EPA the existing unit allowance allocations, in accordance with section 6 of this rule, for the control periods in 2021 and 2022.
- (2) By June 1, 2019, and June 1 every two (2) years thereafter, the department shall submit to U.S. EPA the existing unit allowance allocations in accordance with section 6 of this rule, for the control periods four (4) and five (5) years after the applicable deadline for submission under this subdivision.
- (3) By July 1, 2021, and July 1 of each year thereafter, the department shall submit to U.S. EPA the new unit set-aside allowance allocations, in accordance with section 7 of this rule, for the control period in the year of the applicable deadline for submission under this subdivision.
- (4) By January 30, 2022, and January 30 of each year thereafter, the department shall submit to U.S. EPA the new unit set-aside allowance allocations in accordance with section 8 of this rule, for the control period in the previous year of the applicable deadline for submission under this subdivision.

(Air Pollution Control Division; [326 IAC 24-7-3](#))

[326 IAC 24-7-4](#) Public review for existing unit allocations

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 4. By March 1 of each year allocations are made under section 3(1) or 3(2) of this rule, the allowance allocations shall be made available for a thirty (30) day public review. The department may adjust each determination if appropriate or necessary to ensure that it is in accordance with this rule.

[326 IAC 24-7-5](#) Baseline heat input and historic emissions

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) For purposes of this rule, an existing unit is a unit with a baseline heat input, in million British thermal units (MMBtu), determined as follows:

(1) If a unit commenced commercial operation prior to January 1, 2016, then the following applies:

(A) For an allowance allocation under section 3(1) of this rule, the baseline heat input is the average of the three (3) highest control period heat inputs in 2011 through 2015.

(B) For an allowance allocation under section 3(2) of this rule, the baseline heat input is the average of the three (3) highest, non-zero control period heat inputs in the five (5) years before the allocation is calculated.

(C) If a unit has only two (2) non-zero heat inputs during the five (5) years before the allocation is calculated, the baseline heat input is the average of those two (2) non-zero control period heat inputs.

(D) If a unit has only one (1) non-zero heat input during the five (5) years before the allocation is calculated, the baseline heat input is that one (1) non-zero control period heat input.

(2) If a unit commenced commercial operation on or after January 1, 2016, and operates each control period during a period of three (3) or more consecutive calendar years, for an allowance allocation under section 3(1) and 3(2) of this rule, the baseline heat input is the average of the three (3) highest, non-zero control period heat input values for the years before the calculation of the allocation, not to exceed five (5) control periods.

(b) The maximum historic emission cap is the maximum SO₂ emissions, in tons, that occurred during any control period of the historic emissions period. The historic emissions period is an eight (8) year history for each unit ending from the most recent year of the five (5) years used for the determination of the heat input under subsection (a)(1).

(c) A unit's control period heat input and a unit's total tons of SO₂ emissions during a control period under this section shall be determined in accordance with 40 CFR 75.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-7-5](#))

[326 IAC 24-7-6](#) Existing unit allocations and adjustments

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 6. (a) For each control period in 2021 and thereafter, the department shall distribute to all existing units that have a baseline heat input, as determined under section 5 of this rule, the total amount of allowances as listed in section 2(1) of this rule in accordance with this section.

(b) The department shall determine an initial allocation by multiplying the existing unit budget listed in section 2(1) of this rule, by the ratio of the baseline heat input of the unit to the total amount of baseline heat input of all CSAPR SO₂ group 1 units and rounding to the nearest whole allowance.

(c) The allocation to each unit is the lesser of the following, plus any reapportioned allowances:

(1) Initial allocation under subsection (b).

(2) A cap on emissions pursuant to a federally enforceable judicial consent decree.

- (3) Maximum historic emissions, as determined under section 5(b) of this rule.
- (4) No allowances as determined under subsection (e).

(d) Allowances remaining after the application of subsection (c) are reapportioned as follows, with the resulting allocation value rounded to the nearest whole allowance:

- (1) Remaining allowances are reapportioned to the remaining units whose initial allocation is not limited by the application of the limits in subsection (c)(2) through (c)(4).
- (2) Allocations are apportioned on the same basis as under subsection (b).
- (3) These steps are repeated with each revised allocation distribution until the entire existing unit portion of the budget is allocated.

(e) A unit receives no allowances if the unit does not operate during the control period in two (2) consecutive years as follows:

- (1) Allowances must not be allocated to the unit for the control period in the fifth year after the first year of not operating and in each year after that fifth year.
- (2) If the unit resumes operation, the department must allocate allowances to the unit in accordance with section 7 of this rule until the unit has a baseline heat input under section 5(a)(2) of this rule.

(Air Pollution Control Division; [326 IAC 24-7-6](#))

[326 IAC 24-7-7](#) New unit allocations

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 7. (a) For each control period in 2021 and thereafter, the department shall allocate to all new units, a total amount of allowances as listed in section 2(2) of this rule. For purposes of this rule, new units either:

- (1) commenced operation on or after January 1, 2016, and do not have a baseline heat input as determined under section 5 of this rule; or
- (2) did not receive allowances as determined under section 6(e) of this rule, and operated during the control period immediately preceding the year of allocation.

(b) For each control period in 2021 and thereafter, a separate new unit set-aside is established for Indiana equal to the allowances listed in section 2(2) of this rule. The new unit set-aside may include additional allowances under 40 CFR 97.611(c)(5)*.

(c) The department must determine, for each new unit described in subsection (a), an allocation of allowances for the later of the following control periods and for each subsequent control period:

- (1) The control period starting in 2021.
- (2) The first full control period after the unit commences commercial operation.
- (3) For a unit misallocated allowances under 40 CFR 97.611(c)*, the first control period in which the unit operates in Indiana after operating in another jurisdiction and the unit must not already have been allocated one (1) or more allowances.
- (4) For a unit described in section 6(e) of this rule that resumes operation, the first full control period after the unit resumes operation.

(d) The allocation to each unit for each control period must be an amount equal to the unit's total tons of SO₂ emissions during the immediately preceding control period, adjusted by the department under subsection (e).

(e) The department may adjust the allocation of subsection (d) as follows:

- (1) If the amount of allowances in the new unit set-aside for a control period is greater than or equal to the sum under this section, then the department shall allocate the amount of allowances determined for each unit under subsection (d).
- (2) If the amount of allowances in the new unit set-aside for a control period is less than the sum under this section, then the department shall allocate to each unit the amount of the allowances determined under subsection (d) for the unit, multiplied by the amount of allowances in the new unit set-aside for

the control period, divided by the sum under this section, and rounded to the nearest allowance.

(f) The department shall notify each CSAPR designated representative of the amount of allowances allocated under subsections (d) and (e) and submit the amount to U.S. EPA in accordance with section 3(3) of this rule.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Air Pollution Control Division; [326 IAC 24-7-7](#))

326 IAC 24-7-8 Unallocated new unit set-aside allowances

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 8. (a) After the completion of the procedures under section 7 of this rule for a control period, if any unallocated allowances remain in a new unit set-aside for the control period, the department shall allocate allowances, as follows:

(1) For each unit described under section 7(a) of this rule, that commenced commercial operation during the period starting January 1 of the year before the year of the control period and ending November 30 of the year of the control period, the department shall determine the positive difference, if any, between the unit's emissions during the control period and the amount of allowances awarded for the unit for the control period.

(2) The department shall determine the sum of the positive differences determined under subdivision (1) and then proceed as follows:

(A) If the amount of unallocated allowances remaining in the new unit set-aside for a control period is greater than or equal to the sum determined under this subdivision, then the department must allocate the amount of allowances determined for each unit under subdivision (1).

(B) If the amount of unallocated allowances remaining in the new unit set-aside for a control period is less than the sum under this subdivision, then the department must allocate to each unit the amount of the allowances determined under subdivision (1), multiplied by the amount of unallocated allowances remaining in the new unit set-aside for the control period, divided by the sum under this clause, and rounded to the nearest whole allowance.

(b) After completion of the procedures under subsection (a) for a control period, if any unallocated allowances remain in the new unit set-aside for the control period, the department shall allocate to each unit that was allocated allowances under section 6 of this rule, and an amount of allowances under the following formula:

$$\text{Unit allowance} = \frac{\text{UA} \times \text{EUA}}{\text{EUB}}$$

Where: Unit allowance is the total allowances allocated to the unit

UA is the total amount of the remaining unallocated allowances in the new unit set-aside

EUA is the unit's allocation under section 7 of this rule for the control period

EUB is the existing unit budget, as listed in section 2(1) of this rule, for the control period, and rounded to the nearest allowance

(c) The department shall notify each CSAPR designated representative of the amount of allowances allocated under subsections (a) and (b) and submit the amount to U.S. EPA in accordance with section 3(4) of this rule.

(Air Pollution Control Division; [326 IAC 24-7-8](#))

SECTION 4. [326 IAC 26-1-5](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 26-1-5](#) Cross-State Air Pollution Rule (CSAPR) participation by electric generating units

Authority: [IC 13-14-8-7](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 5. Participation **by electric generating units** in the ~~CAIR~~ **a Cross-State Air Pollution Rule (CSAPR)** cap and trade program shall satisfy **under [326 IAC 24](#) or 40 CFR 97** satisfies the sulfur dioxide (SO₂) and oxides of nitrogen (NO_x) requirements of this rule.

(Air Pollution Control Division; [326 IAC 26-1-5](#); filed Jan 23, 2008, 1:37 p.m.: [20080220-IR-326060208FRA](#))

SECTION 5. THE FOLLOWING ARE REPEALED: [326 IAC 24-1](#); [326 IAC 24-2](#); [326 IAC 24-3](#).

[Notice of Public Hearing](#)

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