

Dated: March 8, 2016.

**Steven M. Fischer,**  
*Bridge Administrator, Thirteenth Coast Guard District.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51, 52, and 97**

[EPA-HQ-OAR-2009-0491; FRL-9943-36-OAR]

RIN 2060-AS40

**Rulemaking To Affirm Interim Amendments to Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is affirming and making permanent certain amendments previously made on an interim basis to the *Code of Federal Regulations* (CFR) provisions implementing the Cross-State Air Pollution Rule (CSAPR). The purpose of the interim amendments was to correctly reflect CSAPR’s compliance deadlines as revised by the effect of the action of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) granting the EPA’s motion to lift the previous stay of CSAPR and delay (toll) its

deadlines by three years. Consistent with the Court’s order, the interim amendments corrected the CFR text to indicate that CSAPR’s Phase 1 emissions budgets apply in 2015 and 2016 and that CSAPR’s Phase 2 emissions budgets and assurance provisions apply in 2017 and beyond. The interim amendments similarly corrected dates in the CFR text related to specific activities required or permitted under CSAPR by regulated sources, the EPA, and states, as well as dates related to the sunset of obligations arising under the Clean Air Interstate Rule (CAIR) upon its replacement by CSAPR. In this action, following consideration of comments received on the interim amendments, the EPA is affirming the interim amendments and making them permanent without change. This action is independent of a separate currently pending EPA proposal to update CSAPR to address the 2008 National Ambient Air Quality Standards for ozone.

**DATES:** The effective date of this action is May 13, 2016.

**ADDRESSES:** The EPA is including this action in Docket ID No. EPA-HQ-OAR-2009-0491, which is also the docket for the original CSAPR rulemaking and other related rulemakings. 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, e.g., 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 electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** David Risley, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343-9177; email address: [Risley.David@epa.gov](mailto:Risley.David@epa.gov). Electronic copies of this document can be accessed through the EPA Web site at: <http://www.epa.gov/airmarkets>.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* Entities regulated by CSAPR are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

Category	NAICS* code	Examples of potentially regulated industries
Industry .....	221112	Fossil fuel electric power generation.

\* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. This table lists the types of entities of which the EPA is now aware that could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by CSAPR, you should carefully examine the applicability provisions in 40 CFR 97.404, 97.504, 97.604, and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Judicial review of this rule is available only by filing a petition for review in the D.C. Circuit on

or before May 13, 2016. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of EPA final action under the CAA that is “nationally applicable” or that the Administrator determines is of “nationwide scope or effect” is available only in the D.C. Circuit. Because the interim amendments that are being affirmed and made permanent in this rule apply to sources in 28 states, this rule is “nationally applicable” within the meaning of section 307(b)(1). For the same reason, the Administrator determines that this rule is of “nationwide scope or effect” for purposes of section 307(b)(1). CAA section 307(b)(1) also provides that filing a petition for reconsideration by the Administrator of this rule does not

affect the finality of the rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The following outline is provided to aid in locating information in this preamble.

- I. Background on CSAPR and the Interim Amendments
- II. Consideration of Comments and Affirmation of Amendments
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review, and Executive

- Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

### I. Background on CSAPR and the Interim Amendments

In this section, the EPA summarizes the rulemaking and litigation history leading to the interim amendments and the content of the amendments.

The EPA issued the Cross-State Air Pollution Rule (CSAPR)<sup>1</sup> in July 2011 to address CAA requirements concerning interstate transport of air pollution and to replace the Clean Air Interstate Rule (CAIR), which the D.C. Circuit had remanded to the EPA for replacement. As subsequently amended, CSAPR requires 28 states to limit their state-wide emissions of sulfur dioxide (SO<sub>2</sub>) and/or nitrogen oxides (NO<sub>x</sub>) in order to reduce or eliminate the states' unlawful contributions to fine particulate matter and/or ground-level ozone pollution in other states. The emissions limitations are defined in terms of maximum state-wide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone-season NO<sub>x</sub> by each state's large electricity generating units (EGUs). The emissions budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets originally scheduled to apply to emissions in 2012 and 2013 and the Phase 2 budgets originally scheduled to apply to emissions in 2014 and later years.

As the mechanism for achieving compliance with the emissions limitations, CSAPR establishes federal implementation plans (FIPs) that require large EGUs in each affected state to participate in one or more new emissions trading programs that supersede the existing CAIR emissions trading programs. Interstate trading of CSAPR's emission allowances is permitted, but the rule includes

<sup>1</sup> Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

"assurance provisions" designed to ensure that individual states' emissions in each Phase 2 compliance period do not exceed the states' respective emissions budgets for that period by more than specified "variability limits."

CSAPR allows states to elect to revise their state implementation plans (SIPs) to modify or replace the FIPs while continuing to rely on the rule's trading programs for compliance with the emissions limitations, and establishes certain requirements and deadlines related to those optional SIP revisions. The rule also contains provisions that sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements.

Certain industry and state and local government petitioners challenged CSAPR in the D.C. Circuit and filed motions seeking a stay of the rule pending judicial review. On December 30, 2011, the Court granted a stay of the rule, ordering the EPA to continue administering CAIR on an interim basis.<sup>2</sup> In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners' claims, but on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings.<sup>3</sup> Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay remained in place and the EPA continued to implement CAIR. Following the Supreme Court decision, in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve petitioners' remaining claims, the EPA filed a motion asking the D.C. Circuit to lift the stay and to toll by three years all CSAPR compliance deadlines that had not passed as of the date of the stay order.<sup>4</sup> On October 23, 2014, the Court granted the EPA's motion.<sup>5</sup> The Court later issued a decision denying most of petitioners' remaining claims while

<sup>2</sup> Order, Document #1350421, *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. issued Dec. 30, 2011).

<sup>3</sup> *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014), *reversing* 696 F.3d 7 (D.C. Cir. 2012).

<sup>4</sup> Respondents' Motion to Lift the Stay Entered on December 30, 2011, Document #1499505, *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. filed June 26, 2014); *see also* Reply in Further Support of Motion to Lift Stay, Document #1508914, *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. filed August 22, 2014). Both documents are available in the docket.

<sup>5</sup> Order, Document #1518738, *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. issued Oct. 23, 2014).

remanding certain state budgets to the EPA for reconsideration.<sup>6</sup>

Following the order lifting the stay, the EPA made ministerial amendments to the dates in the CSAPR regulatory text in 40 CFR parts 51, 52, and 97 to clarify how the EPA would implement the rule consistent with the D.C. Circuit's order granting the EPA's motion to lift the stay and toll the rule's deadlines. Generally, the amendments tolled all dates and years in the then-current regulatory text that had not passed as of December 30, 2011 (the date of the stay order) by three calendar years. The purpose of the ministerial amendments was to restore parties and the rule to the status that would have existed but for the stay, albeit three years later; preserve the rule's internal consistency; render moot questions as to whether the Court's order might not have tolled some of the individual dates being amended; and provide clarity to stakeholders and the public, thereby permitting orderly implementation of the rule. Implementation of Phase 1 of CSAPR began on January 1, 2015, consistent with the D.C. Circuit's order and with the amended deadlines in the CSAPR regulatory text.

The ministerial amendments were described in detail in a December 2014 **Federal Register** document.<sup>7</sup> The most fundamental amendments made clear that, consistent with the Court's order, compliance with CSAPR's Phase 1 emissions budgets is now required in 2015 and 2016 (instead of 2012 and 2013) and compliance with the rule's Phase 2 emissions budgets and assurance provisions is now required in 2017 and beyond (instead of 2014 and beyond).<sup>8</sup> Other amendments tolled specific deadlines for sources to certify monitoring systems and to start reporting emissions, for the EPA to allocate and record emission allowances, and for states to take optional steps to modify or replace their CSAPR FIPs through SIP revisions. Dates were also tolled in the regulatory provisions that sunsetted CAIR-related obligations upon the replacement of CAIR by CSAPR, and a new deadline was set for removal of CAIR NO<sub>x</sub> allowances from allowance tracking system accounts. No regulatory text was amended other than dates, and no

<sup>6</sup> *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

<sup>7</sup> Rulemaking to Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter, 79 FR 71663 (Dec. 3, 2014).

<sup>8</sup> The EPA also administratively converted the 2012-vintage and 2013-vintage CSAPR emission allowances previously recorded in tracking system accounts into 2015-vintage and 2016-vintage allowances, respectively.

substantive changes to CSAPR were made.

The December 2014 **Federal Register** document publishing the ministerial amendments also described the administrative process that the EPA is following with respect to the amendments. After the D.C. Circuit's October 23, 2014 order granting the EPA's motion to lift the stay and toll CSAPR's deadlines, insufficient time remained before the January 1, 2015 start of implementation for the EPA to complete notice-and-comment rulemaking to amend the CSAPR regulations in the CFR so as to reflect the new implementation schedule. In order to facilitate orderly implementation of CSAPR, the EPA therefore amended the CSAPR regulations in the CFR using rulemaking procedures authorized in section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) under which agencies may, upon finding good cause, issue rules without prior notice or opportunity for public comment and make rules effective immediately upon **Federal Register** publication. However, the EPA also implemented the amendments on an interim basis only and provided notice and an opportunity for comment on the content of the amendments. The December 2014 document stated that the EPA would issue a final rule confirming the interim amendments or making any further amendments that might be necessary following consideration of any comments received.

The scope of comment requested in the December 2014 **Federal Register** document regarding the interim amendments was tailored to the narrow character of the amendments. Specifically, the EPA requested comment on "whether, *in order to be consistent with the Court's order tolling CSAPR deadlines by three years*, the provisions of this interim rule should become permanent or, alternatively, whether any date or year in the regulatory text amended by the interim final rule should either be restored to the date or year as it appeared in the regulatory text prior to promulgation of the interim final rule or should be changed to a date or year different from the date or year set in the interim final rule." 79 FR at 71670 (emphasis added). The document further expressly stated that "[t]he EPA is not reopening for comment any provisions of CSAPR other than the dates and years amended in the interim final rule for consistency with the Court's order tolling CSAPR deadlines by three years." *Id.*

## II. Consideration of Comments and Affirmation of Amendments

In this section, the EPA summarizes and responds to the comments received on the interim amendments and, following consideration of the comments, takes action to affirm the interim amendments and make them permanent.

The EPA received three comments on the interim amendments. None of the comments addresses the topic on which comment was sought, namely whether the interim amendments correctly tolled the deadlines in the CSAPR regulations by three years consistent with the D.C. Circuit's order granting the EPA's request to lift the stay. Instead, the comments raise issues outside the scope of the interim amendments and the request for comment.

The first commenter expresses general opposition to any tolling of the original CSAPR deadlines, stating that the industry could meet the CSAPR NO<sub>x</sub> Ozone Season budgets without tolling and that tolling could lead to an increase in transported air pollution. Although related to the CSAPR deadlines and tolling, a comment generally opposing any tolling of the deadlines is outside the scope of comment requested and is clearly inconsistent with the D.C. Circuit's order granting the EPA's motion to lift the stay and toll CSAPR's deadlines. The commenter's remaining comments are unrelated to the CSAPR compliance deadlines or tolling. For example, the commenter states that the EPA should promulgate an additional rulemaking to address newer, more stringent ozone standards and in particular to address NO<sub>x</sub> emissions on days of high electricity demand. The commenter also advocates that the EPA not allow compliance with CSAPR to be deemed to satisfy regulatory requirements to install best available retrofit technology (BART) or reasonably available control technology (RACT). Finally, the commenter states that the EPA should provide guidance on title V permitting and on replacement of a CSAPR FIP with an equally or more stringent SIP revision that would not include participation in CSAPR.

The second commenter states that the CSAPR deadlines should be tolled by four rather than three years in order to provide affected units with additional time to install controls and generally to enable affected units to avoid the need to undertake compliance activities while litigation regarding CSAPR continues. As the EPA explained in the motion to lift the stay and toll the deadlines for three years, immediate

lifting of the stay was necessary to prevent further delay in implementation of CSAPR and its important health benefits. *See* Respondent's Motion, *supra* note 4, at 9–13. Tolling the CSAPR deadlines by four years instead of three would have exacerbated the implementation delay and frustrated this important public purpose. Further, as also explained in the motion, tolling the deadlines by three years restored parties and the rule to the status that would have existed but for the stay, albeit three years later, and available data showed that compliance was readily achievable on the schedule that the EPA proposed in the motion. *Id.* at 13–16. Emissions data reported over the first year of CSAPR implementation bear out the EPA's expectations regarding the feasibility of compliance and confirm the reasonableness of not delaying the deadlines beyond three years.<sup>9</sup>

In addition to these considerations, we also note that this comment, like the other comments received, is outside the scope of comment requested, even after taking account of the commenter's argument that the comment is in scope. The commenter asserts that this comment is on point, focusing on the phrase in the December 2014 **Federal Register** document asking whether any date "should be changed to a date or year different from the date or year set in the" interim amendments. However, the commenter takes that phrase out of context and thereby misconstrues the scope of comment requested. As already noted, the phrase cited by the commenter was qualified in the December 2014 **Federal Register** document by a preceding phrase making clear that the context of the request was whether a change to a particular date or year would improve the amendments' consistency with the D.C. Circuit's court's order granting the EPA's motion to lift the stay and toll CSAPR's deadlines by three years. Similarly, the following sentence in the December 2014 **Federal Register** notice stated that "[t]he EPA is not reopening for comment any provisions of CSAPR other than the dates and years amended in the interim final rule for consistency with the Court's order tolling CSAPR deadlines by three years." Thus, notwithstanding the commenter's assertion to the contrary, the comment is outside the scope of comment requested and is clearly inconsistent with the D.C. Circuit's order granting the EPA's motion to lift the stay and toll CSAPR's deadlines by three years.

<sup>9</sup> See reported 2015 emissions data at EPA Air Markets Program Data Web site, <http://ampd.epa.gov/ampd/>.

The third commenter states that when tolling the CSAPR compliance deadlines, the EPA should also revise the unit-level allocations of allowances issued to affected units in the commenter's state for the first five program years for one of the CSAPR trading programs. When establishing the current unit-level allowance allocations, the EPA considered the annual emission limits imposed on certain units by consent decrees and generally capped the annual allocations to those units at those annual limits. See 77 FR 10324, 10329–30 (February 21, 2012). However, the annual allocations were based on the consent decree annual limits (as then known) for what would have been CSAPR's first five program years before tolling—*i.e.*, 2012 through 2016—rather than the consent decree annual limits for CSAPR's first five program years after tolling—*i.e.*, 2015 through 2019. Some of the commenter's units are subject to 2015–2019 consent decree annual limits lower than the 2012–2016 consent decree annual limits that the EPA considered when establishing the annual allocations for those units for the first five program years, with the consequence that, after tolling, the units' annual allocations will exceed their annual emission limits and the excess allowances will be subject to surrender under the terms of the consent decree.<sup>10</sup> However, notwithstanding the fact that the commenter seeks to have the EPA repeat the same general allocation procedure that the EPA followed in previous rulemakings when establishing CSAPR's current unit-level allowance allocations, this comment is outside the scope of comment requested. The EPA's motion to the D.C. Circuit sought only to lift the stay and toll CSAPR's deadlines, and the order granting the motion cannot be construed as authorizing changes beyond that narrow scope. Consistent with the D.C. Circuit's order, the interim amendments were limited to changing dates in the CFR as necessary to reflect the authorized tolling of CSAPR's deadlines, and the scope of comment requested was limited to whether the interim amendments correctly reflected tolling of the deadlines by three years. Revising the unit-level allocations established in previous rulemakings

<sup>10</sup>CSAPR allows states to submit SIP revisions to replace the EPA's default allowance allocations with state-determined allocations for any program year after 2015, and the state in which the commenter's units are located has submitted two SIP revisions with state-determined allocations that if approved would address the commenter's concern for program year 2016 and for program years 2017 through 2019, respectively. The EPA has already approved the SIP revision addressing program year 2016. 80 FR 50789 (Aug. 21, 2015).

would require new notice-and-comment rulemaking beyond the scope of the EPA's motion, the D.C. Circuit's order, and the interim amendments, and comments seeking such new rulemaking are outside the scope of comment requested.

Having considered the comments received on the interim amendments, the EPA has determined to affirm the amendments and make them permanent without change. The EPA's authority to take this action is provided by CAA sections 110 and 301 (42 U.S.C. 7410 and 7601).

### III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

#### A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

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

#### B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. This action simply affirms and makes permanent a previous interim action tolling the deadlines of CSAPR by three years, including the deadlines for the rule's information collection requirements.

#### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action will not impose any requirements on small entities because it does not change existing regulatory requirements. This action simply affirms and makes permanent a previous interim action tolling the deadlines of CSAPR by three years.

#### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or

tribal governments or the private sector. This action simply affirms and makes permanent a previous interim action tolling the deadlines of CSAPR by three years.

#### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply affirms and makes permanent a previous interim action tolling the deadlines of CSAPR by three years.

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

This action does not have tribal implications as specified in Executive Order 13175. This action simply affirms and makes permanent a previous interim action tolling the deadlines of CSAPR by three years. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48208, 48346 (August 8, 2011).

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply affirms and makes permanent a previous interim action tolling the deadlines of the CSAPR FIPs implementing previously promulgated health or safety-based federal standards.

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

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

#### I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This action simply affirms and makes permanent a previous interim action tolling the deadlines of CSAPR by three years. Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income, minority, and indigenous populations while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347–52 (August 8, 2011).

*K. Congressional Review Act (CRA)*

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 52*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 97*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Accordingly, the interim rule amending 40 CFR parts 51, 52, and 97 which was published at 79 FR 71663 on December 3, 2014, is adopted as a final rule without change.

Dated: February 26, 2016.

**Gina McCarthy,**  
Administrator.

[FR Doc. 2016–04889 Filed 3–11–16; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Part 105**

[Docket No. USCG–2014–0195]

**RIN 1625–AC18**

**Commercial Fishing Vessels Dispensing Petroleum Products**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising its safety regulations for uninspected commercial fishing vessels (CFVs) carrying flammable or combustible liquid cargoes in bulk. The revisions align the regulations with the current applicable statute and make minor nonsubstantive changes. This rule promotes the Coast Guard's maritime safety and stewardship (environmental protection) missions.

**DATES:** This final rule is effective April 13, 2016. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 2016.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2014–0195 and are available on the Internet by going to <http://www.regulations.gov>, inserting USCG–2014–0195 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this final rule, call or email Mr. Jack Kemerer, Fishing Vessel Safety Division (CG–CVC–3), Office of Commercial Vessel Compliance (CVC), U.S. Coast Guard; telephone 202–372–1249, email [Jack.A.Kemerer@uscg.mil](mailto:Jack.A.Kemerer@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

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**I. Abbreviations**

- CFV Commercial fishing vessel
- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- E.O. Executive Order
- FR Federal Register
- MSM Marine Safety Manual
- NPRM Notice of proposed rulemaking
- OMB Office of Management and Budget
- § Section symbol
- UL Underwriters Laboratories Inc.
- U.S.C. United States Code

**II. Basis, Purpose, and Background**

The basis of this regulatory action is the Secretary of Homeland Security's regulatory authority under 46 U.S.C. 2103, 3703 and 49 U.S.C. 5103. The Secretary's authority under these sections was delegated to the Coast Guard in DHS Delegation No. 0170.1(II) (80), (92.a), and (92.b).

Section 2103 of Title 46 gives the Secretary general regulatory authority to implement subtitle II of 46 U.S.C. (Chapters 21 through 147), including Chapter 37 (Carriage of Liquid Bulk Dangerous Cargoes). Section 3703 of Title 46 gives the Secretary both mandatory and discretionary regulatory authority for the specific implementation of Chapter 37. Section 5103 of Title 49 gives the Secretary the authority<sup>1</sup> to designate the hazardous material covered by Chapter 51 (Transportation of Hazardous Material) and to regulate the safety with which that material is transported.

The primary purpose of this rule is to revise Coast Guard regulations at 46 CFR part 105 so that they align with 46 U.S.C. 3702(c) and (d), as those provisions were last amended in 1984.

Incidentally to their main commercial fishing industry activities, some commercial fishing vessels (CFVs, a term that applies to fishing, fish tender, and fish processing vessels) carry petroleum and other combustible cargoes, to dispense or deliver to other CFVs at sea, or to remote villages (typically in Alaska) that in large part are economically dependent on the commercial fishing industry. Our

<sup>1</sup> This authority originally was conferred on the Secretary of Transportation and in 2002 transferred to the Secretary of Homeland Security; Pub. L. 107–296 (codified at 6 U.S.C. 468(b)). As we discuss in section III of this preamble, this final rule amends the "Authority" line of 46 CFR part 105 to reflect this transfer of authority.