Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter C —Air Programs
Part 52 —Approval and Promulgation of Implementation Plans

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A General Provisions

Editorial Note: Nomenclature changes to part 52 appear at 81 FR 74586, Oct. 26, 2016.

Subpart A—General Provisions

Source: 37 FR 10846, May 31, 1972, unless otherwise noted.

§ 52.01 Definitions.

All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act and in parts 51 and 60 of this chapter.

(a) The term *stationary source* means any building, structure, facility, or installation which emits or may emit an air pollutant for which a national standard is in effect.

(b) The term *commenced* means that an owner or operator has undertaken a continuous program of construction or modification.

(c) The term *construction* means fabrication, erection, or installation.

(d) The phrases *modification* or *modified source* mean any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any pollutant for which a national standard has been promulgated under part 50 of this chapter or which results in the emission of any such pollutant not previously emitted, except that:

(1) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(2) The following shall not be considered a change in the method of operation:

(i) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) An increase in the hours of operation;

(iii) Use of an alternative fuel or raw material, if prior to the effective date of a paragraph in this part which imposes conditions on or limits modifications, the source is designed to accommodate such alternative use.

(e) The term *startup* means the setting in operation of a source for any purpose.

(f) [Reserved]

(g) The term *heat input* means the total gross calorific value (where gross calorific value is measured by ASTM Method D2015-66, D240-64, or D1826-64) of all fuels burned.

(h) The term *total rated capacity* means the sum of the rated capacities of all fuel-burning equipment connected to a common stack. The rated capacity shall be the maximum guaranteed by the equipment manufacturer or the maximum normally achieved during use, whichever is greater.

[37 FR 19807, Sept. 22, 1972, as amended at 38 FR 12698, May 14, 1973; 39 FR 42514, Dec. 5, 1974; 43 FR 26410, June 19, 1978]

§ 52.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans and the Administrator's promulgation of such plans or portions thereof. Approval of a plan or any portion thereof is based upon a determination by the Administrator that such plan or portion meets the requirements of section 110 of the Act and the provisions of part 51 of this chapter.

(b) Any plan or portion thereof promulgated by the Administrator substitutes for a State plan or portion thereof disapproved by the Administrator or not submitted by a State, or supplements a State plan or portion thereof. The promulgated provisions, together with any portions of a State plan approved by the Administrator, constitute the applicable plan for purposes of the Act.

(c) Where nonregulatory provisions of a plan are disapproved, the disapproval is noted in this part and a detailed evaluation is provided to the State, but no substitute provisions are promulgated by the Administrator.

(d) All approved plans and plan revisions listed in subparts B through DDD and FFF of this part and on file at the Office of the Federal Register are approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Notice of amendments to the plans will be published in the FEDERAL REGISTER. The plans and plan revisions are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. In addition the plans and plan revisions are available at the following locations:

(1) Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M St., SW., Room M1500, Washington, DC 20460.

(2) The appropriate EPA Regional Office as listed below:

(i) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Environmental Protection Agency, Region 1, 5 Post Office Square—Suite 100, Boston, MA 02109-3912.

(ii) New York, New Jersey, Puerto Rico, and Virgin Islands. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866.

(iii) Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, and West Virginia. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029.

(iv) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

(v) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507.

(vi) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102.

(vii) Iowa, Kansas, Missouri, and Nebraska. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

(viii) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

(ix) Arizona, California, Hawaii, Nevada, American Samoa, Commonwealth of the Northern Mariana Islands, and Guam. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(x) Alaska, Idaho, Oregon, and Washington. Environmental Protection Agency, Region 10, 1200 6th Avenue Seattle, WA 98101.

(e) Each State's plan is dealt with in a separate subpart, which includes an introductory section identifying the plan by name and the date of its submittal, a section classifying regions, and a section setting forth dates for attainment of the national standards. Additional sections are included as necessary to specifically identify disapproved provisions, to set forth reasons for disapproval, and to set forth provisions of the plan promulgated by the Administrator. Except as otherwise specified, all supplemental information submitted to the Administrator with respect to any plan has been submitted by the Governor of the State.

(f) Revisions to applicable plans will be included in this part when approved or promulgated by the Administrator.

[37 FR 10846, May 31, 1972, as amended at 37 FR 15080, July 27, 1972; 47 FR 38886, Sept. 3, 1982; 61 FR 16060, Apr. 11, 1996; 72 FR 38793, July 16, 2007; 76 FR 49671, Aug. 11, 2011; 78 FR 37975, June 25, 2013; 79 FR 22035, Apr. 21, 2014; 84 FR 44228, Aug. 23, 2019]

§ 52.04 Classification of regions.

Each subpart sets forth the priority classification, by pollutant, for each region in the State. Each plan for each region was evaluated according to the requirements of part 51 of this chapter applicable to regions of that priority.

§ 52.05 Public availability of emission data.

Each subpart sets forth the Administrator's disapproval of plan procedures for making emission data available to the public after correlation with applicable emission limitations, and includes the promulgation of requirements that sources report emission data to the Administrator for correlation and public disclosure.

§ 52.06 Legal authority.

(a) The Administrator's determination of the absence or inadequacy of legal authority required to be included in the plan is set forth in each subpart. This includes the legal authority of local agencies and State governmental agencies other than an air pollution control agency if such other agencies are assigned responsibility for carrying out a plan or portion thereof.

(b) No legal authority as such is promulgated by the Administrator. Where required regulatory provisions are not included in the plan by the State because of inadequate legal authority, substitute provisions are promulgated by the Administrator.

[37 FR 10846, May 31, 1972, as amended at 60 FR 33922, June 29, 1995]

§ 52.07 Control strategies.

(a) Each subpart specifies in what respects the control strategies are approved or disapproved. Where emission limitations with a future effective date are employed to carry out a control strategy, approval of the control strategy and the implementing regulations does not supersede the requirements of subpart N of this chapter relating to compliance schedules for individual sources or categories of sources. Compliance schedules for individual sources or categories of sources must require such sources to comply with applicable requirements of the plan as expeditiously as practicable, where the requirement is part of a control strategy designed to attain a primary standard, or within a reasonable time, where the

requirement is part of a control strategy designed to attain a secondary standard. All sources must be required to comply with applicable requirements of the plan no later than the date specified in this part for attainment of the national standard which the requirement is intended to implement.

(b) A control strategy may be disapproved as inadequate because it is not sufficiently comprehensive, although all regulations provided to carry out the strategy may themselves be approved. In this case, regulations for carrying out necessary additional measures are promulgated in the subpart.

(c) Where a control strategy is adequate to attain and maintain a national standard but one or more of the regulations to carry it out is not adopted or not enforceable by the State, the control strategy is approved and the necessary regulations are promulgated by the Administrator.

(d) Where a control strategy is adequate to attain and maintain air quality better than that provided for by a national standard but one or more of the regulations to carry it out is not adopted or not enforceable by the State, the control strategy is approved and substitute regulations necessary to attain and maintain the national standard are promulgated.

[37 FR 10846, May 31, 1972, as amended at 37 FR 19807, Sept. 22, 1972; 51 FR 40676, Nov. 7, 1986]

§ 52.08 Rules and regulations.

Each subpart identifies the regulations, including emission limitations, which are disapproved by the Administrator, and includes the regulations which the Administrator promulgates.

§ 52.09 Compliance schedules.

(a) In each subpart, compliance schedules disapproved by the Administrator are identified, and compliance schedules promulgated by the Administrator are set forth.

(b) Individual source compliance schedules submitted with certain plans have not yet been evaluated, and are not approved or disapproved.

(c) The Administrator's approval or promulgation of any compliance schedule shall not affect the responsibility of the owner or operator to comply with any applicable emission limitation on and after the date for final compliance specified in the applicable schedule.

[37 FR 10846, May 31, 1972, as amended at 38 FR 30877, Nov. 8, 1973]

§ 52.10 Review of new sources and modifications.

In any plan where the review procedure for new sources and source modifications does not meet the requirements of subpart I of this chapter, provisions are promulgated which enable the Administrator to obtain the necessary information and to prevent construction or modification.

[37 FR 10846, May 31, 1972, as amended at 51 FR 40677, Nov. 7, 1986]

§ 52.11 Prevention of air pollution emergency episodes.

(a) Each subpart identifies portions of the air pollution emergency episode contingency plan which are disapproved, and sets forth the Administrator's promulgation of substitute provisions.

(b) No provisions are promulgated to replace any disapproved air quality monitoring or communications portions of a contingency plan, but detailed critiques of such portions are provided to the State.

(c) Where a State plan does not provide for public announcement regarding air pollution emergency episodes or where the State fails to give any such public announcement, the Administrator will issue a public announcement that an episode stage has been reached. When making such an announcement, the Administrator will be guided by the suggested episode criteria and emission control actions suggested in Appendix L of part 51 of this chapter or those in the approved plan.

[37 FR 10846, May 31, 1972, as amended at 37 FR 19807, Sept. 22, 1972]

§ 52.12 Source surveillance.

(a) Each subpart identifies the plan provisions for source surveillance which are disapproved, and sets forth the Administrator's promulgation of necessary provisions for requiring sources to maintain records, make reports, and submit information.

(b) No provisions are promulgated for any disapproved State or local agency procedures for testing, inspection, investigation, or detection, but detailed critiques of such portions are provided to the State.

(c) For purposes of Federal enforcement, the following test procedures and methods shall be used, provided that for the purpose of establishing whether or not a person has violated or is in violation of any provision of the plan, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed:

(1) Sources subject to plan provisions which do not specify a test procedure and sources subject to provisions promulgated by the Administrator will be tested by means of the appropriate procedures and methods prescribed in part 60 of this chapter unless otherwise specified in this part.

(2) Sources subject to approved provisions of a plan wherein a test procedure is specified will be tested by the specified procedure.

[37 FR 10846, May 31, 1972, as amended at 40 FR 26032, June 20, 1975; 62 FR 8328, Feb. 24, 1997]

§ 52.13 Air quality surveillance; resources; intergovernmental cooperation.

Disapproved portions of the plan related to the air quality surveillance system, resources, and intergovernmental cooperation are identified in each subpart, and detailed critiques of such portions are provided to the State. No provisions are promulgated by the Administrator.

§ 52.14 State ambient air quality standards.

Any ambient air quality standard submitted with a plan which is less stringent than a national standard is not considered part of the plan.

§ 52.15 Public availability of plans.

Each State shall make available for public inspection at least one copy of the plan in at least one city in each region to which such plan is applicable. All such copies shall be kept current.

§ 52.16 Submission to Administrator.

(a) All requests, reports, applications, submissions, and other communications to the Administrator pursuant to this part shall be submitted in duplicate and addressed to the appropriate Regional Office of the Environmental Protection Agency. For any submission pursuant to this part that is also a submission of a plan or plan revision pursuant to 40 CFR part 51, the submission shall conform to the requirements of appendix V to 40 CFR part 51, rather than the requirements of this paragraph.

(b) The Regional Offices are as follows:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. EPA Region 1, 5 Post Office Square—Suite 100, Boston, MA 02109-3912.

(2) New York, New Jersey, Puerto Rico, and Virgin Islands. EPA Region 2, 290 Broadway, New York, NY 10007-1866.

(3) Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, and West Virginia. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029.

(4) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

(5) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507.

(6) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102.

(7) Iowa, Kansas, Missouri, and Nebraska. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

(8) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

(9) Arizona, California, Hawaii, Nevada, American Samoa, Commonwealth of the Northern Mariana Islands, and Guam. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(10) Alaska, Idaho, Oregon, and Washington. EPA, Region 10, 1200 6th Avenue, Seattle, WA 98101.

[61 FR 16061, Apr. 11, 1996, as amended at 72 FR 38793, July 16, 2007; 76 FR 49671, Aug. 11, 2011; 78 FR 37975, June 25, 2013; 79 FR 22035, Apr. 21, 2014; 80 FR 7341, Feb. 10, 2015; 84 FR 44228, Aug. 23, 2019]

§ 52.17 Severability of provisions.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

[37 FR 19808, Sept. 22, 1972]

§ 52.18 Abbreviations.

Abbreviations used in this part shall be those set forth in part 60 of this chapter.

[38 FR 12698, May 14, 1973]

§ 52.20 Attainment dates for national standards.

Each subpart contains a section which specifies the latest dates by which national standards are to be attained in each region in the State. An attainment date which only refers to a month and a year (such as July 1975) shall be construed to mean the last day of the month in question. However, the specification of attainment dates for national standards does not relieve any State from the provisions of subpart N of this chapter which require all sources and categories of sources to comply with applicable requirements of the plan—

(a) As expeditiously as practicable where the requirement is part of a control strategy designed to attain a primary standard, and

(b) Within a reasonable time where the requirement is part of a control strategy designed to attain a secondary standard.

[37 FR 19808, Sept. 22, 1972, as amended at 39 FR 34535, Sept. 26, 1974; 51 FR 40676, Nov. 7, 1986]

§ 52.21 Prevention of significant deterioration of air quality.

(a)

(1) ***Plan disapproval.*** The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable, in subparts B through DDD and FFF of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD and FFF of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(2) ***Applicability procedures.***

(i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(*a*) through (*f*) of this section.

(A) Except as otherwise provided in paragraph (a)(2)(v) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(B) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(*c*) through (*f*) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(C) ***Actual-to-projected-actual applicability test for projects that only involve existing emissions units.*** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41) of this section) and the baseline actual emissions (as defined in paragraphs (b)(48)(i) and (ii) of this section), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(D) ***Actual-to-potential test for projects that only involve construction of a new emissions unit(s).*** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(48)(iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(E) [Reserved]

(F) ***Hybrid test for projects that involve multiple types of emissions units.*** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(2)(iv)(*c*) and (*d*) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(G) The "sum of the difference" as used in paragraphs (*c*), (*d*) and (*f*) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs.

(v) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under paragraph (aa) of this section.

(b) ***Definitions.*** For the purposes of this section:

(1)

(i) ***Major stationary source*** means:

(A) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(B) Notwithstanding the stationary source size specified in paragraph (b)(1)(i)(*a*) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(C) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major source that is major for volatile organic compounds or NO_X shall be considered major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, and

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(2)

(i) ***Major modification*** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined at paragraph (b)(40) of this section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(E) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I; or

(*2*) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(F) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.

(G) Any change in ownership at a stationary source.

(H) [Reserved]

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

(iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) of this section for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) of this section shall apply.

(v) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph (b)(1)(iii) of this section.

(3)

(i) ***Net emissions increase*** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv) of this section; and

(B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(3)(i)(*b*) shall be determined as provided in paragraph (b)(48) of this section, except that paragraphs (b)(48)(i)(*c*) and (b)(48)(ii)(*d*) of this section shall not apply.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(A) The date five years before construction on the particular change commences; and

(B) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(A) The Administrator or other reviewing authority has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(B) [Reserved]

(C) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (b)(1)(iii) of this section or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(B) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vii) [Reserved]

(viii) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(ix) Paragraph (b)(21)(ii) of this section shall not apply for determining creditable increases and decreases.

(4) ***Potential to emit*** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) ***Stationary source*** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(6)

(i) ***Building, structure, facility, or installation*** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (*i.e.,* which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00716-0, respectively).

(ii) Notwithstanding the provisions of paragraph (b)(6)(i) of this section, *building, structure, facility, or installation* means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within $^{1}/_{4}$ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(6)(ii), has the same meaning as in 40 CFR 63.761.

(7) ***Emissions unit*** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(31) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (b)(7)(i) and (ii) of this section.

(i) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(7)(i) of this section. A replacement unit, as defined in paragraph (b)(33) of this section, is an existing emissions unit.

(8) ***Construction*** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(9) ***Commence*** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) ***Necessary preconstruction approvals or permits*** means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(11) ***Begin actual construction*** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) ***Best available control technology*** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60, 61, or 63. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13)

(i) ***Baseline concentration*** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(A) The actual emissions, as defined in paragraph (b)(21) of this section, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section; and

(B) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(A) Actual emissions, as defined in paragraph (b)(21) of this section, from any major stationary source on which construction commenced after the major source baseline date; and

(B) Actual emissions increases and decreases, as defined in paragraph (b)(21) of this section, at any stationary source occurring after the minor source baseline date.

(14)

(i) ***Major source baseline date*** means:

(A) In the case of PM_{10} and sulfur dioxide, January 6, 1975;

(B) In the case of nitrogen dioxide, February 8, 1988; and

(C) In the case of $PM_{2.5}$, October 20, 2010.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

(B) In the case of nitrogen dioxide, February 8, 1988; and

(C) In the case of $PM_{2.5}$, October 20, 2011.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(B) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the Administrator shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Administrator, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(15)

(i) ***Baseline area*** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 μg/m^3 (annual average) for SO_2, NO_2, or PM_{10}; or equal or greater than 0.3 μg/m^3 (annual average) for $PM_{2.5}$.

(ii) Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(A) Establishes a minor source baseline date; or

(B) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Administrator rescinds the corresponding minor source baseline date in accordance with paragraph (b)(14)(iv) of this section.

(16) ***Allowable emissions*** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR parts 60 and 61;

(ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(17) ***Federally enforceable*** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(18) ***Secondary emissions*** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(19) ***Innovative control technology*** means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) ***Fugitive emissions*** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)

(i) ***Actual emissions*** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa) of this section. Instead, paragraphs (b)(41) and (b)(48) of this section shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) ***Complete*** means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23)

(i) Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy of particulate matter emissions

PM_{10}: 15 tpy

$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (b)(50) of this section

Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H_2S): 10 tpy

Total reduced sulfur (including H_2S): 10 tpy

Reduced sulfur compounds (including H_2S): 10 tpy

Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

(ii) ***Significant*** means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(23)(i) of this section does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(23)(i) of this section, *significant* means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$, (24-hour average).

(24) ***Federal Land Manager*** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(25) ***High terrain*** means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) ***Low terrain*** means any area other than high terrain.

(27) ***Indian Reservation*** means any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.

(28) ***Indian Governing Body*** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(29) ***Adverse impact on visibility*** means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(30) ***Volatile organic compounds (VOC)*** is as defined in § 51.100(s) of this chapter.

(31) ***Electric utility steam generating unit*** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(32) [Reserved]

(33) ***Replacement unit*** means an emissions unit for which all the criteria listed in paragraphs (b)(33)(i) through (iv) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i) The emissions unit is a reconstructed unit within the meaning of § 60.15(b)(1) of this chapter, or the emissions unit completely takes the place of an existing emissions unit;

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

(iii) The replacement does not alter the basic design parameters of the process unit; and

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(34) ***Clean coal technology*** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(35) ***Clean coal technology demonstration project*** means a project using funds appropriated under the heading “Department of Energy-Clean Coal Technology”, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(36) ***Temporary clean coal technology demonstration project*** means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(37)

(i) ***Repowering*** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(38) ***Reactivation of a very clean coal-fired electric utility steam generating unit*** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(39) ***Pollution prevention*** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

(40) ***Significant emissions increase*** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(23) of this section) for that pollutant.

(41)

(i) ***Projected actual emissions*** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph (b)(41)(i) of this section (before beginning actual construction), the owner or operator of the major stationary source:

(A) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(B) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(C) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(48) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(D) In lieu of using the method set out in paragraphs (a)(41)(ii)(*a*) through (*c*) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(4) of this section.

(42) [Reserved]

(43) ***Prevention of Significant Deterioration (PSD) program*** means the EPA-implemented major source preconstruction permit programs under this section or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to § 51.166 of this chapter to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(44) ***Continuous emissions monitoring system (CEMS)*** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(45) ***Predictive emissions monitoring system (PEMS)*** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(46) ***Continuous parameter monitoring system (CPMS)*** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(47) ***Continuous emissions rate monitoring system (CERMS)*** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(48) ***Baseline actual emissions*** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(48)(i) through (iv) of this section.

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated pollutant.

(D) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (b)(48)(i)(*b*) of this section.

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the reviewing authority for a permit required by a plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of § 51.165(a)(3)(ii)(G) of this chapter.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (b)(48)(ii)(*b*) and (*c*) of this section.

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(48)(i) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (b)(48)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (b)(48)(iii) of this section.

(49) ***Subject to regulation*** means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(i) ***Greenhouse gases (GHGs),*** the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph (b)(49)(iv) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.

(ii) For purposes of paragraphs (b)(49)(iii) through (iv) of this section, the term *tpy CO_2 equivalent emissions (CO_2e)* shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of part 98 of this chapter—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(49)(ii)(*a*) of this section for each gas to compute a tpy CO_2e.

(iii) The term *emissions increase* as used in paragraph (b)(49)(iv) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in paragraph (b)(23)(ii) of this section.

(iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(A) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(B) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more.

(50) ***Regulated NSR pollutant,*** for purposes of this section, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(A) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(B) Any pollutant identified under this paragraph (b)(50)(i)(*b*) as a constituent or precursor for a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act;

(iv) Any pollutant that otherwise is subject to regulation under the Act as defined in paragraph (b)(49) of this section.

(v) Notwithstanding paragraphs (b)(50)(i) through (iv) of this section, the term *regulated NSR pollutant* shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, and which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

(51) ***Reviewing authority*** means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under § 51.165 or § 51.166 of this chapter, or the Administrator in the case of EPA-implemented permit programs under this section.

(52) ***Project*** means a physical change in, or change in the method of operation of, an existing major stationary source.

(53) ***Lowest achievable emission rate (LAER)*** is as defined in § 51.165(a)(1)(xiii) of this chapter.

(54) ***Reasonably available control technology (RACT)*** is as defined in § 51.100(o) of this chapter.

(c) ***Ambient air increments.*** In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Area	
$PM_{2.5}$:	
Annual arithmetic mean	1
24-hr maximum	2
PM_{10}:	
Annual arithmetic mean	4
24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2

Pollutant	Maximum allowable increase (micrograms per cubic meter)
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II Area	
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III Area	
$PM_{2.5}$:	
Annual arithmetic mean	8
24-hr maximum	18
PM_{10}:	
Annual arithmetic mean	34
24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(d) ***Ambient air ceilings.*** No concentration of a pollutant shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard, or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

(e) ***Restrictions on area classifications.***

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(i) International parks,

(ii) National wilderness areas which exceed 5,000 acres in size,

(iii) National memorial parks which exceed 5,000 acres in size, and

(iv) National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(f) [Reserved]

(g) ***Redesignation.***

(1) All areas (except as otherwise provided under paragraph (e) of this section) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (e) of this section) may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State implementation plan.

(2) The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(i) At least one public hearing has been held in accordance with procedures established in § 51.102 of this chapter;

(ii) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(iii) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(iv) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(v) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph (e) of this section refers may be redesignated as Class III if—

(i) The redesignation would meet the requirements of paragraph (g)(2) of this section;

(ii) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation:

(iii) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(iv) Any permit application for any major stationary source or major modification, subject to review under paragraph (l) of this section, which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III provided that:

(i) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv) of this section; and

(ii) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (e) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

(h) ***Stack heights.***

(1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by—

(i) So much of the stack height of any source as exceeds good engineering practice, or

(ii) Any other dispersion technique.

(2) Paragraph (h)(1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

(i) ***Exemptions.***

(1) The requirements of paragraphs (j) through (r) of this section shall not apply to a particular major stationary source or major modification, if;

(i)-(v) [Reserved]

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(viii) The source is a portable stationary source which has previously received a permit under this section, and

(A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(B) The emissions from the source would not exceed its allowable emissions; and

(C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(D) Reasonable notice is given to the Administrator prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Administrator.

(2) The requirements of paragraphs (j) through (r) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Act. Nonattainment designations for revoked NAAQS, as contained in 40 CFR part 81, shall not be viewed as current designations under section 107 of the Act for purposes of determining the applicability of paragraphs (j) through (r) of this section to a major stationary source or major modification after the revocation of that NAAQS is effective.

(3) The requirements of paragraphs (k), (m) and (o) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(4) The requirements of paragraphs (k), (m) and (o) of this section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

(5) The Administrator may exempt a stationary source or modification from the requirements of paragraph (m) of this section, with respect to monitoring for a particular pollutant if:

(i) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

(A) Carbon monoxide—575 μg/m^3, 8-hour average;

(B) Nitrogen dioxide—14 μg/m^3, annual average;

(C) $PM_{2.5}$—0 μg/m^3;

(C) Note to paragraph (i)(5)(i)(*c*): In accordance with *Sierra Club* v. *EPA,* 706 F.3d 428 (DC Cir. 2013), no exemption is available with regard to $PM_{2.5}$.

(D) PM_{10}—10 μg/m^3, 24-hour average;

(E) Sulfur dioxide—13 μg/m^3, 24-hour average;

(F) Ozone;

(G) Lead—0.1 μg/m^3, 3-month average;

(H) Fluorides—0.25 μg/m^3, 24-hour average;

(I) Total reduced sulfur—10 μg/m^3, 1-hour average;

(J) Hydrogen sulfide—0.2 μg/m^3, 1-hour average;

(K) Reduced sulfur compounds—10 μg/m^3, 1-hour average; or

> Note to paragraph (c)(50)(i)(f): No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i) of this section; or

(iii) The pollutant is not listed in paragraph (i)(5)(i) of this section.

(6)-(12) [Reserved]

(j) ***Control technology review.***

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR part 60, 61, or 63.

(2) A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

(k) ***Source impact analysis*** —

(1) ***Required demonstration.*** The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(i) Any national ambient air quality standard in any air quality control region; or

(ii) Any applicable maximum allowable increase over the baseline concentration in any area.

(2) [Reserved]

(l) ***Air quality models.***

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models).

(2) Where an air quality model specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

(m) ***Air quality analysis*** —

(1) ***Preapplication analysis.***

(i) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(A) For the source, each pollutant that it would have the potential to emit in a significant amount;

(B) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Administrator determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(iv) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(v) [Reserved]

(vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR part 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1) of this section.

(vii)-(viii) [Reserved]

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.

(n) ***Source information.*** The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs (j), (k), (m), and (o) of this section apply, such information shall include:

(i) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(ii) A detailed schedule for construction of the source or modification;

(iii) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the Administrator, the owner or operator shall also provide information on:

(i) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(ii) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(o) ***Additional impact analyses.***

(1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) ***Visibility monitoring.*** The Administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) ***Sources impacting Federal Class I areas—additional requirements*** —

(1) ***Notice to Federal land managers.*** The Administrator shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Administrator shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q) of this section, and shall make available to them any materials used in making that determination, promptly after the Administrator makes such determination. Finally, the Administrator shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) ***Federal Land Manager.*** The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(3) ***Visibility analysis.*** The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the Federal Class I area, the Administrator must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(4) ***Denial—impact on air quality related values.*** The Federal Land Manager of any such lands may demonstrate to the Administrator that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Administrator concurs with such demonstration, then he shall not issue the permit.

(5) ***Class I variances.*** The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the State may authorize the Administrator, provided that the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, $PM_{2.5,}$ PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Annual arithmetic mean	25

(6) ***Sulfur dioxide variance by Governor with Federal Land Manager's concurrence.*** The owner or operator of a proposed source or modification which cannot be approved under paragraph (p)(5) of this section may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Administrator shall issue a permit to such source or modification pursuant to the requirements of paragraph (p)(8) of this section provided that the applicable requirements of this section are otherwise met.

(7) ***Variance by the Governor with the President's concurrence.*** In any case where the Governor recommends a variance with which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Administrator shall issue a permit pursuant to the requirements of paragraph (p)(8) of this section provided that the applicable requirements of this section are otherwise met.

(8) ***Emission limitations for Presidential or gubernatorial variance.*** In the case of a permit issued pursuant to paragraph (p)(6) or (7) of this section, the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase [Micrograms per cubic meter]

Period of exposure	Terrain areas	
	Low	High
24-hr maximum	36	62

Period of exposure	Terrain areas	
	Low	High
3-hr maximum	130	221

(q) ***Public participation.*** The administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

(r) ***Source obligation.***

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) [Reserved]

(6) Except as otherwise provided in paragraph (r)(6)(vi)(*b*) of this section, the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(*c*) of this section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(i) of this section to the Administrator. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Administrator before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(*b*) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Administrator if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section), by a significant amount (as defined in paragraph (b)(23) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section. Such report shall be submitted to the Administrator within 60 days after the end of such year. The report shall contain the following:

(A) The name, address and telephone number of the major stationary source;

(B) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(vi) A “reasonable possibility” under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(A) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(B) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(41)(ii)(*c*) of this section, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(*b*) of this section, and not also within the meaning of paragraph (r)(6)(vi)(*a*) of this section, then provisions (r)(6)(ii) through (v) do not apply to the project.

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) of this section available for review upon a request for inspection by the Administrator or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this chapter.

(s) ***Environmental impact statements.*** Whenever any proposed source or modification is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the broad environmental reviews under that Act and under section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

(t) ***Disputed permits or redesignations.*** If any State affected by the redesignation of an area by an Indian Governing Body, or any Indian Governing Body of a tribe affected by the redesignation of an area by a State, disagrees with such redesignation, or if a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any State which the Governor of an affected State or Indian Governing Body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or Indian Reservation, the Governor or Indian Governing Body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian Governing Body involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable State implementation plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

(u) ***Delegation of authority.***

(1) The Administrator shall have the authority to delegate his responsibility for conducting source review pursuant to this section, in accordance with paragraph (u)(2) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency, it shall consult with the appropriate state, tribe, and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate state, tribe, and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall send a copy of any public comment notice required under paragraph (q) of this section to the Administrator through the appropriate Regional Office.

(3) In the case of a source or modification which proposes to construct in a Class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a Class II area, and where no standard under section 111 of the Act has been promulgated for such source category, the Administrator must approve the determination of best available control technology as set forth in the permit.

(v) ***Innovative control technology.***

(1) An owner or operator of a proposed major stationary source or major modification may request the Administrator in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Administrator shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) of this section, by a date specified by the Administrator. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k) of this section, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Administrator;

(iv) The source or modification would not before the date specified by the Administrator:

(A) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(B) Impact any area where an applicable increment is known to be violated; and

(v) All other applicable requirements including those for public participation have been met.

(vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The Administrator shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The Administrator decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3) of this section, the Administrator may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) ***Permit rescission.***

(1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r)(2) of this section or is rescinded under this paragraph (w).

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (w)(3) of this section may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Administrator rescinds a permit under this paragraph, the Administrator shall post a notice of the rescission determination on a public Web site identified by the Administrator within 60 days of the rescission.

(x)-(z) [Reserved]

(aa) ***Actuals PALs.*** The provisions in paragraphs (aa)(1) through (15) of this section govern actuals PALs.

(1) ***Applicability.***

(i) The Administrator may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO_2e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements in paragraphs (aa)(1) through (15) of this section. The term "PAL" shall mean "actuals PAL" throughout paragraph (aa) of this section.

(ii) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit:

(A) Is not a major modification for the PAL pollutant;

(B) Does not have to be approved through the PSD program;

(C) Is not subject to the provisions in paragraph (r)(4) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

(D) Does not make GHGs subject to regulation as defined by paragraph (b)(49) of this section.

(iii) Except as provided under paragraph (aa)(1)(ii)(*c*) of this section, a major stationary source or a GHG-only source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) ***Definitions.*** For the purposes of this section, the definitions in paragraphs (aa)(2)(i) through (xi) of this section apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) of this section or in the Act.

(i) ***Actuals PAL*** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(48) of this section) of all emissions units (as defined in paragraph (b)(7) of this section) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, *actuals PAL* means a PAL based on the baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of all emissions units (as defined in paragraph (aa)(2)(xiv) of this section) at the source, that emit or have the potential to emit GHGs.

(ii) ***Allowable emissions*** means "allowable emissions" as defined in paragraph (b)(16) of this section, except as this definition is modified according to paragraphs (aa)(2)(ii)(*a*) and (*b*) of this section.

(A) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(B) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(4) of this section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) ***Small emissions unit*** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(23) of this section or in the Act, whichever is lower. For a GHG PAL issued on a CO_2e basis, *small emissions unit* means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO_2e basis defined as "significant" for the purposes of paragraph (b)(49)(iii) of this section at the time the PAL permit is being issued.

(iv) ***Major emissions unit*** means:

(A) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(B) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(C) For a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements under paragraph (b)(49) of this section at the time the PAL permit is being issued.

(v) ***Plantwide applicability limitation (PAL)*** means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a CO_2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15) of this section.

(vi) ***PAL effective date*** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) ***PAL effective period*** means the period beginning with the PAL effective date and ending 10 years later.

(viii) ***PAL major modification*** means, notwithstanding paragraphs (b)(2), (b)(3), and (b)(49) of this section (the definitions for major modification, net emissions increase, and subject to regulation), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) ***PAL permit*** means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Administrator that establishes a PAL for a major stationary source or a GHG-only source.

(x) ***PAL pollutant*** means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

(xi) ***Significant emissions unit*** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(23) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv) of this section. For a GHG PAL issued on a CO_2e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO_2e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit as defined in paragraph (aa)(2)(iii) of this section, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv)(*c*) of this section.

(xii) ***GHG-only source*** means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(1) of this section and the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(49) of this section at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under paragraph (aa) of this section.

(xiii) ***Baseline actual emissions*** for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the permitting authority for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive

24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(D) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by paragraphs (aa)(2)(xiii)(*b*) and (*c*) of this section.

(xiv) ***Emissions unit*** with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (aa)(2)(xiv)(*a*) of this section.

(xv) ***Minor source*** means any stationary source that does not meet the definition of major stationary source in paragraph (b)(1) of this section for any pollutant at the time the PAL is issued.

(3) ***Permit application requirements.*** As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the Administrator for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (aa)(13)(i) of this section.

(iv) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in paragraph (b)(1)(i)(*a*) and (*b*) of this section or a GHG-only source as defined in paragraph (aa)(2)(xii) of this section.

(4) ***General requirements for establishing PALs.***

(i) The Administrator is allowed to establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(*a*) through (*g*) of this section are met.

(A) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(B) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (aa)(5) of this section.

(C) The PAL permit shall contain all the requirements of paragraph (aa)(7) of this section.

(D) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

(E) Each PAL shall regulate emissions of only one pollutant.

(F) Each PAL shall have a PAL effective period of 10 years.

(G) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under § 51.165(a)(3)(ii) of this chapter unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) ***Public participation requirements for PALs.*** PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the Administrator provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Administrator must address all material comments before taking final action on the permit.

(6) ***Setting the 10-year actuals PAL level.***

(i) Except as provided in paragraph (aa)(6)(ii) and (iii) of this section, the plan shall provide that the actuals PAL level for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section or, for GHGs, paragraph (aa)(2)(xiii) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (aa)(6)(i) of this section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(iii) For CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as “significant” on a CO_2e basis for the purposes of paragraph (b)(49)(iii) at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level (in tons per year CO_2e) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or state regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit.

(7) ***Contents of the PAL permit.*** The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (xi) of this section.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO_2e.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

(iv) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of paragraph (aa)(9) of this section.

(vi) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (aa)(13)(i) of this section.

(vii) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12) of this section.

(viii) A requirement to retain the records required under paragraph (aa)(13) of this section on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (aa)(14) of this section by the required deadlines.

(x) Any other requirements that the Administrator deems necessary to implement and enforce the PAL.

(xi) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under paragraph (b)(49) of this section as long as the source complies with the PAL.

(8) ***PAL effective period and reopening of the PAL permit.*** The requirements in paragraphs (aa)(8)(i) and (ii) of this section apply to actuals PALs.

(i) ***PAL effective period.*** The Administrator shall specify a PAL effective period of 10 years.

(ii) ***Reopening of the PAL permit.***

(A) During the PAL effective period, the Administrator must reopen the PAL permit to:

(*1*) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(*2*) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under § 51.165(a)(3)(ii) of this chapter; and

(*3*) Revise the PAL to reflect an increase in the PAL as provided under paragraph (aa)(11) of this section.

(B) The Administrator shall have discretion to reopen the PAL permit for the following:

(*1*) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(*2*) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source or GHG-only source under the State Implementation Plan; and

(*3*) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(C) Except for the permit reopening in paragraph (aa)(8)(ii)(*a*)(*1*) of this section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (aa)(5) of this section.

(9) ***Expiration of a PAL.*** Any PAL that is not renewed in accordance with the procedures in paragraph (aa)(10) of this section shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) of this section shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (aa)(9)(i)(*a*) and (*b*) of this section.

(A) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii) of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Administrator) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

(B) The Administrator shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Administrator determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Administrator may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Administrator issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (aa)(9)(i)(*b*) of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(v) The major stationary source or GHG-only source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for

those emission limitations that had been established pursuant to paragraph (r)(4) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(*c*) of this section.

(10) ***Renewal of a PAL.***

(i) The Administrator shall follow the procedures specified in paragraph (aa)(5) of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Administrator.

(ii) ***Application deadline.*** A major stationary source or GHG-only source owner or operator shall submit a timely application to the Administrator to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) ***Application requirements.*** The application to renew a PAL permit shall contain the information required in paragraphs (aa)(10)(iii)(*a*) through (*d*) of this section.

(A) The information required in paragraphs (aa)(3)(i) through (iii) of this section.

(B) A proposed PAL level.

(C) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(D) Any other information the owner or operator wishes the Administrator to consider in determining the appropriate level for renewing the PAL.

(iv) ***PAL adjustment.*** In determining whether and how to adjust the PAL, the Administrator shall consider the options outlined in paragraphs (aa)(10)(iv)(*a*) and (*b*) of this section. However, in no case may any such adjustment fail to comply with paragraph (aa)(10)(iv)(*c*) of this section.

(A) If the emissions level calculated in accordance with paragraph (aa)(6) of this section is equal to or greater than 80 percent of the PAL level, the Administrator may renew the PAL at the same level without considering the factors set forth in paragraph (aa)(10)(iv)(*b*) of this section; or

(B) The Administrator may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Administrator in his or her written rationale.

(C) Notwithstanding paragraphs (aa)(10)(iv)(a) and (b) of this section:

(*1*) If the potential to emit of the major stationary source or GHG-only source is less than the PAL, the Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and

(*2*) The Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of paragraph (aa)(11) of this section (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Administrator has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) ***Increasing a PAL during the PAL effective period.***

(i) The Administrator may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the provisions in paragraphs (aa)(11)(i)(*a*) through (*d*) of this section.

(A) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(B) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(C) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (aa)(11)(i)(*a*) of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(D) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(ii) The Administrator shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (aa)(11)(i)(*b*)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (aa)(5) of this section.

(12) ***Monitoring requirements for PALs.***

(i) ***General requirements.***

(A) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO_2e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(B) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (aa)(12)(ii)(*a*) through (*d*) of this section and must be approved by the Administrator.

(C) Notwithstanding paragraph (aa)(12)(i)(*b*) of this section, you may also employ an alternative monitoring approach that meets paragraph (aa)(12)(i)(*a*) of this section if approved by the Administrator.

(D) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(ii) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (aa)(12)(iii) through (ix) of this section:

(A) Mass balance calculations for activities using coatings or solvents;

(B) CEMS;

(C) CPMS or PEMS; and

(D) Emission factors.

(iii) ***Mass balance calculations.*** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(A) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(B) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(C) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Administrator determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) ***CEMS.*** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(B) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) ***CPMS or PEMS.*** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(B) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Administrator, while the emissions unit is operating.

(vi) ***Emission factors.*** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(A) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(B) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(C) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Administrator determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (aa)(12)(iii) through (vii) of this section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Administrator shall, at the time of permit issuance:

(A) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) ***Re-validation.*** All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Administrator. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) ***Recordkeeping requirements.***

(i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(A) A copy of the PAL permit application and any applications for revisions to the PAL; and

(B) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) ***Reporting and notification requirements.*** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Administrator in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii) of this section.

(i) ***Semi-annual report.*** The semi-annual report shall be submitted to the Administrator within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(*a*) through (*g*) of this section.

(A) The identification of owner and operator and the permit number.

(B) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.

(C) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period.

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).

(G) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) ***Deviation report.*** The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The PAL requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) ***Re-validation results.*** The owner or operator shall submit to the Administrator the results of any re-validation test or method within 3 months after completion of such test or method.

(15) ***Transition requirements.***

(i) The Administrator may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after March 3, 2003.

(ii) The Administrator may supersede any PAL that was established prior to March 3, 2003 with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

(bb) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[43 FR 26403, June 19, 1978]

Editorial Note: For FEDERAL REGISTER citations affecting § 52.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

Effective Date Note: At 76 FR 17556, Mar. 30, 2011, § 52.21(b)(2)(v) and (b)(3)(iii)(*c*) were stayed indefinitely. At 89 FR 84288, Oct. 22, 2024, stayed paragraph (b)(3)(iii)(*c*) was designated paragraph (b)(3)(iii)(C).

Editorial Note: § 52.21 has two paragraphs designated (i)(5)(i)(C).

§ 52.23 Violation and enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the

State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule.

[39 FR 33512, Sept. 18, 1974, as amended at 54 FR 27285, June 28, 1989]

§ 52.24 Statutory restriction on new sources.

(a) Any area designated nonattainment pursuant to section 107(d) of the Act to which, immediately prior to the enactment of the Amendments to the Act of 1990 (November 15, 1990), a prohibition of construction or modification of major stationary sources was applied, shall retain that prohibition if such prohibition was applied by virtue of a finding of the Administrator that the State containing such an area:

(1) Failed to submit an implementation plan meeting the requirements of an approvable new source review permitting program; or

(2) Failed to submit an implementation plan that provided for timely attainment of the national ambient air quality standard for sulfur dioxide by December 31, 1982. This prohibition shall apply until the Administrator approves a plan for such area as meeting the applicable requirements of part D of title I of the Act as amended (NSR permitting requirements) or subpart 5 of part D of title I of the Act as amended (relating to attainment of the national ambient air quality standards for sulfur dioxide), as applicable.

(b) Permits to construct and operate as required by permit programs under section 172(c)(5) of the Act may not be issued for new or modified major stationary sources proposing to locate in nonattainment areas or areas in a transport region where the Administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area or transport region in which the proposed source is to be constructed or modified in accordance with the requirements of part D of title I of the Act.

(c) Whenever, on the basis of any information, the Administrator finds that a State is not in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may issue an order under section 113(a)(5) of the Act prohibiting the construction or modification of any major stationary source in any area to which such requirement applies.

(d) The restrictions in paragraphs (a) and (b) of this section apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant (or precursors, as applicable) for which the transport region or nonattainment area was designated such, and for which the applicable implementation plan is not being carried out in accordance with, or does not meet, the requirements of part D of title I of the Act.

(e) For any transport region or any area designated as nonattainment for any national ambient air quality standard, the restrictions in paragraphs (a) and (b) of this section shall apply to any major stationary source or major modification that would be major for the pollutant (or precursors, where applicable) for which the area is designated nonattainment or a transport region, if the stationary source or major modification would be constructed anywhere in the designated nonattainment area or transport region.

(f) The provisions in § 51.165 of this chapter shall apply in interpreting the terms under this section.

(g) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then:

(1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area or transport region in which the source or modification is located, then the permit may not be so revised; or

(2) If the construction moratorium is no longer in effect in that area, then the requirements of § 51.165 of this chapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(h) This section does not apply to major stationary sources or major modifications locating in a clearly defined part of a nonattainment area or transport region (such as a political subdivision of a State), where EPA finds that a plan which meets the requirements of part D of title I of the Act is in effect and is being implemented in that part.

(i)-(j) [Reserved]

(k) For an area designated as nonattainment after July 1, 1979, the Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S shall govern permits to construct and operate applied for during the period between the date of designation as nonattainment and the date the NSR permit program meeting the requirements of part D is approved. The Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S, shall also govern permits to construct and operate applied for in any area designated under section 107(d) of the CAA as attainment or unclassifiable for ozone that is located in an ozone transport region prior to the date the NSR permitting program meeting the requirements of part D is approved.

[70 FR 71704, Nov. 29, 2005]

Editorial Note: For FEDERAL REGISTER citations affecting § 52.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 52.26 [Reserved]

§ 52.27 Protection of visibility from sources in attainment areas.

(a) ***Plan disapproval.*** The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas, from sources emitting pollutants in any portion of any State where the existing air quality is better than the national ambient air quality standards for such pollutants, and where a State PSD program has been approved as part of the applicable SIP pursuant to 40 CFR 51.24. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) ***Definitions.*** For purposes of this section, all terms shall have the meaning ascribed to them in the Clean Air Act, in the prevention of significant deterioration (PSD) program approved as part of the applicable SIP pursuant to 40 CFR 51.24 for the State, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) ***Federal visibility analysis.*** Any person shall have the right, in connection with any application for a permit to construct a major stationary source or major modification, to request that the administrator take responsibility from the State for conducting the required review of a proposed source's impact on visibility in any Federal Class I area. If requested, the Administrator shall take such responsibility and conduct such review pursuant to paragraphs (e), (f) and (g) of this section in any case where the State fails to provide all of the procedural steps listed in paragraph (d) of this section. A request pursuant to this paragraph must be made within 60 days of the notice soliciting public comment on a permit, unless such notice is not properly given. The Administrator will not entertain requests challenging the substance of any state action concerning visibility where the State has provided all of the procedural steps listed in paragraph (d) of this section.

(d) ***Procedural steps in visibility review.***

(1) The reviewing authority must provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include the proposed source's anticipated impacts on visibility in any Federal Class I area as provided by the applicant. Notification must also be given to all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) The reviewing authority must consider any analysis performed by the Federal land managers, provided within 30 days of the notification required by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have:

(i) An adverse impact on visibility in any Federal Class I area, or

(ii) An adverse impact on visibility in an integral vista codified in part 81 of this title.

(3) Where the reviewing authority finds that such an analysis does not demonstrate that the effect in paragraphs (d)(2) (i) or (ii) of this section will occur, either an explanation of its decision or notification as to where the explanation can be obtained must be included in the notice of public hearing.

(4) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(i) of this section will occur, the permit shall not be issued.

(5) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(ii) of this section will occur, the reviewing authority may issue a permit if the emissions from the source or modification will be consistent with reasonable progress toward the national goal. In making this decision, the reviewing authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(e) ***Federal land manager notification.*** The Administrator shall provide all of the procedural steps listed in paragraph (d) of this section in conducting reviews pursuant to this section.

(f) ***Monitoring.*** The Administrator may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(g) ***Public participation.*** The Administrator shall follow the applicable procedures at 40 CFR part 124 in conducting reviews under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR part 124 do not apply.

(h) ***Federal permit.*** In any case where the Administrator has made a finding that a State consistently fails or is unable to provide the procedural steps listed in paragraph (d) of this section, the Administrator shall require all prospective permit applicants in such State to apply directly to the Administrator, and the Administrator shall conduct a visibility review pursuant to this section for all permit applications.

[50 FR 28551, July 12, 1985, as amended at 52 FR 45137, Nov. 24, 1987]

§ 52.28 Protection of visibility from sources in nonattainment areas.

(a) ***Plan disapproval.*** The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas where visibility is considered an important value, from sources emitting pollutants in any portion of any State where the existing air quality is not in compliance with the national ambient air quality standards for such pollutants. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) ***Definitions.*** For the purposes of this section:

(1) ***Visibility protection area*** means any area listed in 40 CFR 81.401-81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the protection of visibility program (40 CFR 51.301) or the prevention of significant deterioration (PSD) program either approved as part of the applicable SIP pursuant to 40 CFR 51.24 or in effect for the applicable SIP pursuant to 40 CFR 52.21, all as in effect on July 12, 1985.

(c) ***Review of major stationary sources and major modifications—source applicability and exemptions.***

(1) No stationary source or modification to which the requirements of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Administrator has sole authority to issue any such permit unless the authority has been delegated pursuant to paragraph (i) of this section.

(2) The requirements of this section shall apply to construction of any new major stationary source or major modification that would both be constructed in an area classified as nonattainment under section 107(d)(1)(A), (B) or (C) of the Clean Air Act and potentially have an impact on visibility in any visibility protection area.

(3) The requirements of this section shall apply to any such major stationary source and any such major modification with respect to each pollutant subject to regulation under the Clean Air Act that it would emit, except as this section otherwise provides.

(4) The requirements of this section shall not apply to a particular major stationary source or major modification, if:

(i) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the State in which the source or modification would be located requests that it be exempt from those requirements; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boiler (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(iii) The source is a portable stationary source which has previously received a permit under this section, and

(A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(B) The emissions from the source would not exceed its allowable emissions; and

(C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(D) Reasonable notice is given to the Administrator, prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation, unless a different time duration is previously approved by the Administrator.

(5) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as attainment under section 107 of the Clean Air Act.

(6) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(d) ***Visibility Impact Analyses.*** The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(e) ***Federal land manager notification.***

(1) The Federal land manager and the Federal official charged with direct responsibility for management of Federal Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(2) The Administrator shall provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any visibility protection area. The Administrator shall also provide for such notification to the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit

application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any visibility protection area. The Administrator shall also notify all affected FLM's within 30 days of receipt of any advance notification of any such permit application.

(3) The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (e)(2) of this section, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any visibility protection area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the visibility protection area, the Administrator must, in the notice of public hearing, either explain his decision or give notice as to where the explanation can be obtained.

(f) ***Public participation.*** The Administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR part 124 do not apply.

(g) ***National visibility goal.*** The Administrator shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in visibility protection areas which impairment results from man-made air pollution. In making the decision to issue a permit, the Administrator may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(h) ***Monitoring.*** The Administrator may require monitoring of visibility in any visibility protection area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(i) ***Delegation of authority.***

(1) The Administrator shall have the authority to delegate the responsibility for conducting source review pursuant to this section to any agency in accordance with paragraphs (i)(2) and (3) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall submit a copy of any public comment notice required under paragraph (f) of this section to the Administrator through the appropriate Regional Office.

(3) The Administrator's authority for reviewing a source or modification located on an Indian Reservation shall not be redelegated other than to a Regional Office of the Environmental Protection Agency, except where the State has assumed jurisdiction over such land under other laws. Where the State has assumed such jurisdiction, the Administrator may delegate his authority to the States in accordance with paragraph (i)(2) of this section.

[50 FR 28551, July 12, 1985]

§ 52.29 [Reserved]

§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.

(a) ***Definitions.*** For the purpose of this section:

(1) The term "political subdivision" refers to the representative body that is responsible for adopting and/or implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term "required activity" means the submission of a plan or plan item, or the implementation of a plan or plan item.

(3) The term "deficiency" means the failure to perform a required activity as defined in paragraph (a)(2) of this section.

(4) For purposes of § 52.30, the terms "plan" or "plan item" mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Clean Air Act, as amended in 1990, or in response to a SIP call issued pursuant to section 110(k)(5) of the Act.

(b) ***Sanctions.*** During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination as provided under section 179(a)(1) through (4) is based.

(c) ***Criteria.*** For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out the required activity) to the political subdivision to perform the required activity.

(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) ***Imposition of sanctions.***

(1) If all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[59 FR 1484, Jan. 11, 1994]

§ 52.31 Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.

(a) ***Purpose.*** The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the sequence in which sanctions will automatically apply under 42 U.S.C. 7509(b), following a finding made by the Administrator pursuant to 42 U.S.C. 7509(a).

(b) ***Definitions.*** All terms used in this section, but not specifically defined herein, shall have the meaning given them in § 52.01.

(1) ***1990 Amendments*** means the 1990 Amendments to the Clean Air Act (Pub. L. No. 101-549, 104 Stat. 2399).

(2) ***Act*** means Clean Air Act, as amended in 1990 (42 U.S.C. 7401 *et seq.* (1991)).

(3) ***Affected area*** means the geographic area subject to or covered by the Act requirement that is the subject of the finding and either, for purposes of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section, is or is within an area designated nonattainment under 42 U.S.C. 7407(d) or, for purposes of the offset sanction under paragraph (e)(1) of this section, is or is within an area otherwise subject to the emission offset requirements of 42 U.S.C. 7503.

(4) ***Criteria pollutant*** means a pollutant for which the Administrator has promulgated a national ambient air quality standard pursuant to 42 U.S.C. 7409 (i.e., ozone, lead, sulfur dioxide, particulate matter, carbon monoxide, nitrogen dioxide).

(5) ***Findings*** **or** ***Finding*** refer(s) to one or more of the findings, disapprovals, and determinations described in subsection 52.31 (c).

(6) ***NAAQS*** means national ambient air quality standard the Administrator has promulgated pursuant to 42 U.S.C. 7409.

(7) ***Ozone precursors*** mean nitrogen oxides (NO_X) and volatile organic compounds (VOC).

(8) ***Part D*** means part D of title I of the Act.

(9) ***Part D SIP or SIP revision*** **or** ***plan*** means a State implementation plan or plan revision that States are required to submit or revise pursuant to part D.

(10) ***Precursor*** means pollutant which is transformed in the atmosphere (later in time and space from point of emission) to form (or contribute to the formation of) a criteria pollutant.

(c) ***Applicability.*** This section shall apply to any State in which an affected area is located and for which the Administrator has made one of the following findings, with respect to any part D SIP or SIP revision required under the Act:

(1) A finding that a State has failed, for an area designated nonattainment under 42 U.S.C. 7407(d), to submit a plan, or to submit one or more of the elements (as determined by the Administrator) required by the provisions of the Act applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under 42 U.S.C. 7410(k);

(2) A disapproval of a submission under 42 U.S.C. 7410(k), for an area designated nonattainment under 42 U.S.C. 7407(d), based on the submission's failure to meet one or more of the elements required by the provisions of the Act applicable to such an area;

(3)

(i) A determination that a State has failed to make any submission required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, including an adequate maintenance plan, or has failed to make any submission, required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, that satisfies the minimum criteria established in relation to such submission under 42 U.S.C. 7410(k)(1)(A); or

(ii) A disapproval in whole or in part of a submission described under paragraph (c)(3)(i) of this section; or

(4) A finding that any requirement of an approved plan (or approved part of a plan) is not being implemented.

(d) ***Sanction application sequencing.***

(1) To implement 42 U.S.C. 7509(a), the offset sanction under paragraph (e)(1) of this section shall apply in an affected area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. To further implement 42 U.S.C. 7509(a), the highway sanction under paragraph (e)(2) of this section shall apply in an affected area 6 months from the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. For the findings under paragraphs (c)(2), (c)(3)(ii), and (c)(4) of this section, the date of the finding shall be the effective date as defined in the final action triggering the sanctions clock.

(2)

(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator issues such a proposed or final disapproval, or 18 months following the finding that started the sanctions clock. The highway

sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator issues such a proposed or final disapproval. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the proposed or final disapproval occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and more than 24 months after the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator issues such proposed or final disapproval.

(3)

(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has conditionally-approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the approval becomes a disapproval or the Administrator

issues such a proposed or final disapproval, whichever is applicable, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill its commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable.

(4)

(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if the Administrator, prior to 18 months from the finding, has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be

deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section first applies, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 18 months but before 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected, or immediately if EPA's proposed or final action finding the deficiency has not been corrected occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan, and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected.

(5) Any sanction clock started by a finding under paragraph (c) of this section will be permanently stopped and sanctions applied, stayed or deferred will be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected. For a sanctions clock and

applied sanctions based on a finding under paragraphs (c)(1) and (c)(3)(i) of this section, a finding that the deficiency has been corrected will occur by letter from the Administrator to the State governor. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraphs (c)(2) and (c)(3)(ii) of this section, a finding that the deficiency has been corrected will occur through a final notice in the FEDERAL REGISTER fully approving the revised SIP. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraph (c)(4) of this section, a finding that the deficiency has been corrected will occur through a final notice in the FEDERAL REGISTER finding that the State is implementing the approved SIP.

(6) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the Administrator from determining through notice-and-comment rulemaking that in specific circumstances the highway sanction, rather than the offset sanction, shall apply 18 months after the Administrator makes one of the findings under paragraph (c) of this section, and that the offset sanction, rather than the highway sanction, shall apply 6 months from the date the highway sanction applies.

(e) ***Available sanctions and method for implementation*** —

(1) ***Offset sanction.***

(i) As further set forth in paragraphs (e)(1)(ii)-(e)(1)(vi) of this section, the State shall apply the emissions offset requirement in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the offset sanction. The State shall apply the emission offset requirements in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least two units of emission reductions for each unit of increased emissions of the pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made. If the deficiency prompting the finding under paragraph (c) of this section is not specific to one or more particular pollutants and their precursors, the 2-to-1 ratio shall apply to all pollutants (and their precursors) for which an affected area within the State listed in paragraph (e)(1)(i) of this section is required to meet the offset requirements of 42 U.S.C. 7503.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding is made with respect to a requirement for the criteria pollutant ozone or when the finding is not pollutant-specific, the State shall not apply the emissions offset requirements at a ratio of at least 2-to-1 for emission reductions to increased emissions for nitrogen oxides where, under 42 U.S.C. 7511a(f), the Administrator has approved an NO_X exemption for the affected area from the Act's new source review requirements under 42 U.S.C. 7501-7515 for NO_X or where the affected area is not otherwise subject to the Act's new source review requirements for emission offsets under 42 U.S.C. 7501-7515 for NO_X.

(iii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding under paragraph (c) of this section is made with respect to PM-10, or the finding is not pollutant-specific, the State shall not apply the emissions offset requirements, at a ratio of at least 2-to-1 for emission reductions to increased emissions to PM-10 precursors if the Administrator has determined under 42 U.S.C. 7513a(e) that major stationary sources of PM-10 precursors do not contribute significantly to PM-10 levels which exceed the NAAQS in the affected area.

(iv) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, at the 2-to-1 ratio required under this section, the State shall comply with the provisions of a State-adopted new source review (NSR) program that EPA has approved under 42 U.S.C. 7410(k)(3)

as meeting the nonattainment area NSR requirements of 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or, if no plan has been so approved, the State shall comply directly with the nonattainment area NSR requirements specified in 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or cease issuing permits to construct and operate major new or modified sources as defined in those requirements. For purposes of applying the offset requirement under 42 U.S.C. 7503 where EPA has not fully approved a State's NSR program as meeting the requirements of part D, the specifications of those provisions shall supersede any State requirement that is less stringent or inconsistent.

(v) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, any permit required pursuant to 42 U.S.C. 7503 and issued on or after the date the offset sanction applies under paragraph (d) of this section shall be subject to the enhanced 2-to-1 ratio under paragraph (e)(1)(i) of this section.

(2) ***Highway funding sanction.*** The highway sanction shall apply, as provided in 42 U.S.C. 7509(b)(1), in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the highway sanction, but shall apply only to those portions of affected areas that are designated nonattainment under 40 CFR part 81.

[59 FR 39859, Aug. 4, 1994]

§ 52.32 Sanctions following findings of SIP inadequacy.

For purposes of the SIP revisions required by § 51.120, EPA may make a finding under section 179(a) (1)-(4) of the Clean Air Act, 42 U.S.C. 7509(a) (1)-(4), starting the sanctions process set forth in section 179(a) of the Clean Air Act. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

[60 FR 4737, Jan. 24, 1995]

§ 52.33 Compliance certifications.

(a) For the purpose of submitting compliance certifications, nothing in this part or in a plan promulgated by the Administrator shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(b) For all federal implementation plans, paragraph (a) of this section is incorporated into the plan.

[62 FR 8328, Feb. 24, 1997]

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

(a) ***Definitions.*** For purposes of this section, the following definitions apply:

(1) ***Administrator*** means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(2) ***Large Electric Generating Units (large EGUs)*** means:

(i) For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 Mwe and produced electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving at any time during 1997 or 1998 a generator that had a nameplate capacity greater than 25 Mwe and produced electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 Mwe and produces electricity for sale.

(3) ***Large Non-Electric Generating Units (large non-EGUs)*** means:

(i) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve at any time during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(A) At no time serves a generator producing electricity for sale; or

(B) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 Mwe or less and has the potential to use 50 percent or less of the potential electrical output capacity of the unit.

(4) ***New sources*** means new and modified sources.

(5) ***NO_X*** means oxides of nitrogen.

(6) ***OTAG*** means the Ozone Transport Assessment Group (active 1995-1997), a national work group that addressed the problem of ground-level ozone and the long-range transport of air pollution across the Eastern United States. The OTAG was a partnership between EPA, the Environmental Council of the States, and various industry and environmental groups.

(7) ***Ozone season*** means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(8) ***Potential electrical output capacity*** means, with regard to a unit, 33 percent of the maximum design heat input of the unit.

(9) ***Unit*** means a fossil-fuel fired stationary boiler, combustion turbine, or combined cycle system.

(b) ***Purpose and applicability.*** Paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section set forth the Administrator's findings with respect to the 1-hour national ambient air quality standard (NAAQS) for ozone that certain new and existing sources of emissions of nitrogen oxides ("NO_X") in certain States emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) of the Clean Air Act (CAA) on emissions in amounts that contribute significantly to nonattainment in certain States that submitted petitions in 1997-1998 addressing such NO_X emissions under section 126 of the CAA. Paragraphs (d), (e)(3) and (e)(4), (f), and (h)(3) and (h)(4) of this section set forth the Administrator's

affirmative technical determinations with respect to the 8-hour NAAQS for ozone that certain new and existing sources of emissions of NO_X in certain States emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) of the CAA on emissions in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, certain States that submitted petitions in 1997-1998 addressing such NO_X emissions under section 126 of the CAA. (As used in this section, the term new source includes modified sources, as well.) Paragraph (i) of this section explains the circumstances under which the findings for sources in a specific State would be withdrawn. Paragraph (j) of this section sets forth the control requirements that apply to the sources of NO_X emissions affected by the findings. Paragraph (k) of this section indefinitely stays the effectiveness of the affirmative technical determinations with respect to the 8-hour ozone standard.

(1) The States that submitted such petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (each of which, hereinafter in this section, may be referred to also as a "petitioning State").

(2) The new and existing sources of NO_X emissions covered by the petitions that emit or would emit NO_X emissions in amounts that make such significant contributions are large electric generating units (EGUs) and large non-EGUs.

(c) ***Section 126(b) findings relating to impacts on ozone levels in Connecticut*** —

(1) ***Section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.*** The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO_X in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Connecticut if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (c)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Connecticut.

(2) ***States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.*** The States, or portions of States, that contain sources of NO_X emissions for which the Administrator is making section 126(b) findings under paragraph (c)(1) of this section are:

(i) Delaware.

(ii) District of Columbia.

(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-2, of this part.

(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-2, of this part.

(v) Maryland.

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-2, of this part.

(vii) Portion of North Carolina located in OTAG Subregion 7, as shown in appendix F, Figure F-2, of this part.

(viii) New Jersey.

(ix) Portion of New York extending west and south of Connecticut, as shown in appendix F, Figure F-2, of this part.

(x) Ohio.

(xi) Pennsylvania.

(xii) Virginia.

(xiii) West Virginia.

(d) ***Affirmative technical determinations relating to impacts on ozone levels in Maine*** —

(1) ***Affirmative technical determinations with respect to the 8-hour ozone standard in Maine.*** The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in the State of Maine, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (d)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 of appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Maine.

(2) ***States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Maine.*** The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.

(ii) Delaware.

(iii) District of Columbia.

(iv) Maryland.

(v) Massachusetts.

(vi) New Jersey.

(vii) New York.

(viii) Pennsylvania.

(ix) Rhode Island.

(x) Virginia.

(e) ***Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in Massachusetts*** —

(1) ***Section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.*** The Administrator finds that any existing major source or group of stationary sources emits NO_X in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Massachusetts if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Massachusetts.

(2) ***States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.*** The portions of States that contain sources of NO_X emissions for which the Administrator is making section 126(b) findings under paragraph (e)(1) of this section are:

(i) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) [Reserved]

(3) ***Affirmative technical determinations with respect to the 8-hour ozone standard in Massachusetts.*** The Administrator of EPA finds that any existing major source or group of stationary sources emits NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Massachusetts, with respect to the 8-hour NAAQS for ozone if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(4) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Massachusetts.

(4) ***States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Massachusetts.*** The portions of States that contain sources for which EPA is making an affirmative technical determination are:

(i) All counties in Ohio located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(f) ***Affirmative technical determinations relating to impacts on ozone levels in New Hampshire*** —

(1) ***Affirmative technical determinations with respect to the 8-hour ozone standard in New Hampshire.*** The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of New Hampshire, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (f)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 of appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of New Hampshire.

(2) ***States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in New Hampshire.*** The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.

(ii) Delaware.

(iii) District of Columbia.

(iv) Maryland.

(v) Massachusetts.

(vi) New Jersey.

(vii) New York.

(viii) Pennsylvania.

(ix) Rhode Island.

(g) ***Section 126(b) findings relating to impacts on ozone levels in the State of New York*** —

(1) ***Section 126(b) findings with respect to the 1-hour ozone standard in the State of New York.*** The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO_X in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of New York if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (g)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of New York.

(2) ***States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in New York.*** The States, or portions of States, that contain sources of NO_X emissions for which the Administrator is making section 126(b) findings under paragraph (g)(1) of this section are:

(i) Delaware.

(ii) District of Columbia.

(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-6, of this part.

(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-6, of this part.

(v) Maryland.

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-6, of this part.

(vii) Portion of North Carolina located in OTAG Subregions 6 and 7, as shown in appendix F, Figure F-6, of this part.

(viii) New Jersey.

(ix) Ohio.

(x) Pennsylvania.

(xi) Virginia.

(xii) West Virginia.

(h) ***Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in the State of Pennsylvania*** —

(1) ***Section 126(b) findings with respect to the 1-hour ozone standard in the State of Pennsylvania.*** The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO_X in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Pennsylvania if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Pennsylvania.

(2) ***States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Pennsylvania.*** The States that contain sources of NO_X emissions for which the Administrator is making section 126(b) findings under paragraph (h)(1) of this section are:

(i) North Carolina.

(ii) Ohio.

(iii) Virginia.

(iv) West Virginia.

(3) ***Affirmative technical determinations with respect to the 8-hour ozone standard in Pennsylvania.*** The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Pennsylvania, with respect to the 8-hour NAAQS for ozone:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(4) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Pennsylvania.

(4) ***States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Pennsylvania.*** The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Alabama.

(ii) Illinois.

(iii) Indiana.

(iv) Kentucky.

(v) Michigan.

(vi) Missouri.

(vii) North Carolina.

(viii) Ohio.

(ix) Tennessee.

(x) Virginia.

(xi) West Virginia.

(i) ***Withdrawal of section 126 findings.*** Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of §§ 51.121 and 51.122 of this chapter for such State.

(j) ***Section 126 control remedy.*** The Federal NO_X Budget Trading Program in part 97 of this chapter applies to the owner or operator of any new or existing large EGU or large non-EGU as to which the Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section.

(k) ***Stay of findings with respect to the 8-hour ozone standard.*** Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) of this section is stayed.

(l) ***Temporary stay of rules.*** Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until February 17, 2000.

[64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65 FR 2726, Jan. 18, 2000; 69 FR 31505, June 3, 2004]

§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?

(a)

(1) The Federal CAIR NO_X Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO_X). Each State that is described in § 51.123(c)(1) and (2) of this chapter received

a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. The provisions of subparts AA through II of part 97 of this chapter, regarding the CAIR NO_X Annual Trading Program, apply to the sources in each of these States that has not promulgated a SIP approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to the sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)

(1) The Federal CAIR NO_X Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to emissions of nitrogen oxides (NO_X) during the ozone season, as defined in § 97.302 of this chapter. Each State that is described in § 51.123(c)(1) and (3) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 8-hour ozone NAAQS. The provisions of subparts AAAA through IIII of part 97 of this chapter, regarding the CAIR NO_X Ozone Season Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

(c) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§ 51.123 and 51.125 of this chapter.

(d)

(1) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123(o) of this chapter are: Indiana, and Ohio.

(2) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123(aa) of this chapter, are: Indiana, and Ohio.

(e) Notwithstanding paragraphs (a) and (b) of this section, such paragraphs are not applicable as they relate to sources in the State of Minnesota as of December 3, 2009, except as provided in § 52.1240(b).

(f) Notwithstanding any provisions of paragraphs (a) through (d) of this section, subparts AA through II and AAAA through IIII of part 97 of this chapter, and any State's SIP to the contrary:

(1) With regard to any control period that begins after December 31, 2014,

(i) The provisions in paragraphs (a) through (d) of this section relating to NO_X annual or ozone season emissions shall not be applicable; and

(ii) The Administrator will not carry out any of the functions set forth for the Administrator in subparts AA through II and AAAA through IIII of part 97 of this chapter;

(2) The Administrator will not deduct for excess emissions any CAIR NO_X allowances or CAIR NO_X Ozone Season allowances allocated for 2015 or any year thereafter;

(3) By March 3, 2015, the Administrator will remove from the CAIR NO_X Allowance Tracking System accounts all CAIR NO_X allowances allocated for a control period in 2015 and any subsequent year, and, thereafter, no holding or surrender of CAIR NO_X allowances will be required with regard to emissions or excess emissions for such control periods; and

(4) By March 3, 2015, the Administrator will remove from the CAIR NO_X Ozone Season Allowance Tracking System accounts all CAIR NO_X Ozone Season allowances allocated for a control period in 2015 and any subsequent year, and, thereafter, no holding or surrender of CAIR NO_X allowances will be required with regard to emissions or excess emissions for such control periods.

[72 FR 62343, Nov. 2, 2007, as amended at 74 FR 48862, Sept. 25, 2009; 74 FR 56726, Nov. 3, 2009; 75 FR 72962, Nov. 29, 2010; 76 FR 48353, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014]

§ 52.36 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of sulfur dioxide?

(a) The Federal CAIR SO2 Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of sulfur dioxide (SO_2). Each State that is described in § 51.124(c) of this chapter is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. The provisions of subparts AAA through III of part 97 of this chapter, regarding the CAIR SO_2 Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

(b) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§ 51.124 and 51.125 of this chapter.

(c) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124(o) of this chapter are: Indiana, and Ohio

(d) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

(e) Notwithstanding any provisions of paragraphs (a) through (c) of this section, subparts AAA through III of part 97 of this chapter and any State's SIP to the contrary:

(1) With regard to any control period that begins after December 31, 2014,

(i) The provisions of paragraphs (a) through (c) of this section relating to SO_2 emissions shall not be applicable; and

(ii) The Administrator will not carry out any of the functions set forth for the Administrator in subparts AAA through III of part 97 of this chapter; and

(2) The Administrator will not deduct for excess emissions any CAIR SO_2 allowances allocated for 2015 or any year thereafter.

[72 FR 62343, Nov. 2, 2007, as amended at 74 FR 48863, Sept. 25, 2009; 74 FR 56726, Nov. 3, 2009; 75 FR 72962, Nov. 29, 2010; 76 FR 48354, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014; 81 FR 74586, Oct. 26, 2016]

§ 52.37 [Reserved]

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) ***NO_X annual emissions*** —

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

(2) ***Applicability of CSAPR NO_X Annual Trading Program provisions.***

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

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

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

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

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

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

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

(v) Provided that:

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

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

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

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

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

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Annual allowances for any such control period to any CSAPR NO_X Annual units covered by § 97.411(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations

or results of auctions to such units of CSAPR NO_X Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 1 to this paragraph;

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

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

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

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

(5) ***Full SIP revisions adopting State CSAPR NO_X Annual Trading Programs.*** A State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section with regard to sources in the

State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_X Annual Trading Program set forth in §§ 97.402 through 97.435 of this chapter, except that the SIP revision:

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

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

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

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

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

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

to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

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

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

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

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

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

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

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

rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(7) ***Continued applicability of certain federal trading program provisions for NO_X annual emissions.***

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

(A) The definitions in § 97.402 of this chapter;

(B) The provisions in § 97.410(a) of this chapter (concerning in part the amounts of the new unit set-asides);

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

(D) The provisions in § 97.411(c)(5) of this chapter (concerning the disposition of incorrectly allocated CSAPR NO_X Annual allowances);

(E) The provisions in § 97.421(f), (g), and (i) of this chapter (concerning the deadlines for recordation of allocations or auctions of CSAPR NO_X Annual allowances) and the provisions in paragraphs (a)(4)(i)(B) and (C) and (a)(5)(i)(B) and (C) of this section (concerning the deadlines for submission to the Administrator of State-determined allocations or auction results); and

(F) The provisions in § 97.425(b) of this chapter (concerning the procedures for administering the assurance provisions).

(ii) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_X Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart AAAAA authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation pursuant to paragraph (a)(2)(ii) or (a)(6) of this section of the applicability of subpart AAAAA of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State's SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR NO_X Annual allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(A) The provisions of § 97.426(c) of this chapter (concerning the transfer of CSAPR NO_X Annual allowances between certain Allowance Management System accounts under common control).

(B) [Reserved]

(8) ***States with approved SIP revisions addressing the CSAPR NO_X Annual Trading Program.*** The following States have SIP revisions approved by the Administrator under paragraph (a)(3), (4), or (5) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(3) of this section as replacing the CSAPR NO_X Annual allowance allocation provisions in § 97.411(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016: Alabama, Kansas, Missouri, and Nebraska.

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(4) of this section as replacing the CSAPR NO_X Annual allowance allocation provisions in §§ 97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2017 or any subsequent year: Kansas, Missouri, and New York.

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Alabama, Georgia, Indiana, Kentucky, Missouri, and South Carolina.

(b) ***NO_X ozone season emissions*** —

(1) ***General requirements.*** The CSAPR NO_X Ozone Season Group 1 Trading Program provisions, the CSAPR NO_X Ozone Season Group 2 Trading Program provisions, and the CSAPR NO_X Ozone Season Group 3 Trading Program provisions set forth respectively in subparts BBBBB, EEEEE, and GGGGG of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of NO_X during the ozone season (defined as May 1 through September 30 of a calendar year) for sources meeting the applicability criteria set forth in subparts BBBBB, EEEEE, and GGGGG, except as otherwise provided in this section.

(2) ***Applicability of CSAPR NO_X Ozone Season Group 1, Group 2, and Group 3 Trading Program provisions.***

(i)

(A) The provisions of subpart BBBBB of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Georgia.

(B) The provisions of subpart BBBBB of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only, except as provided in paragraph (b)(14)(iii) of this section: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana,

Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(ii)

(A) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 and each subsequent year: Iowa, Kansas, and Tennessee.

(B) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 through 2020 only, except as provided in paragraph (b)(14)(iii) of this section: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(C) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 through 2022 only, except as provided in paragraph (b)(14)(iii) of this section: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin.

(D) Notwithstanding any other provision of this part:

(*1*) While a stay under paragraph (b)(2)(iii)(D)(*1*) or (*4*) of this section is in effect for the sources in a State and Indian country located within the borders of such State with regard to emissions occurring in a control period in a given year—

(*i*) The provisions of subpart EEEEE of part 97 of this chapter (as modified in any approval after November 6, 2024 of a SIP revision for such State by the Administrator under paragraph (b)(8) of this section) or the provisions of a SIP revision approved after November 6, 2024 for such State by the Administrator under paragraph (b)(9) of this section, if any, shall apply to the sources in such State and areas of Indian country within the borders of such State subject to the State's SIP authority, and the provisions of subpart EEEEE of part 97 of this chapter shall apply to the sources in areas of Indian country within the borders of such State not subject to the State's SIP authority, with regard to emissions occurring in such control period; and

(*ii*) Such State shall be deemed to be listed in this paragraph (b)(2)(ii)(D)(*1*) for purposes of this part and part 97 of this chapter.

(*2*) While a stay under paragraph (b)(2)(iii)(D)(*2*) or (*5*) of this section is in effect for the sources in a State and Indian country located within the borders of such State with regard to emissions occurring in a control period in a given year—

(*i*) The provisions of subpart EEEEE of part 97 of this chapter (as modified in any approval of a SIP revision for such State by the Administrator under paragraph (b)(8) of this section) or the provisions of a SIP revision approved for such State by the Administrator under paragraph (b)(9) of this section, if any, shall apply to the sources in such State and areas of Indian country within the borders of such State subject to the State's SIP authority, and the provisions of subpart EEEEE of

part 97 of this chapter shall apply to the sources in areas of Indian country within the borders of such State not subject to the State's SIP authority, with regard to emissions occurring in such control period; and

(*ii*) Such State shall be deemed to be listed in this paragraph (b)(2)(ii)(D)(*2*) for purposes of this part and part 97 of this chapter.

(iii)

(A) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2021 and each subsequent year: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(B) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2023 and each subsequent year: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin.

(C) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring on and after August 4, 2023, and in each subsequent year: Minnesota, Nevada, and Utah.

(D) Notwithstanding any other provision of this part:

(*1*) The effectiveness of paragraph (b)(2)(iii)(A) of this section is stayed for sources in Kentucky, Louisiana, and West Virginia and Indian country located within the borders of such States with regard to emissions occurring in 2023 and thereafter. While a stay under this paragraph (b)(2)(iii)(D)(*1*) is in effect for a State, such State shall be deemed not to be listed in paragraph (b)(2)(iii)(A) of this section for purposes of part 97 of this chapter for a control period after 2022.

(*2*) The effectiveness of paragraph (b)(2)(iii)(B) of this section is stayed for sources in Alabama, Arkansas, Mississippi, Missouri, Oklahoma, and Texas and Indian country located within the borders of such States with regard to emissions occurring in 2023 and thereafter. While a stay under this paragraph (b)(2)(iii)(D)(*2*) is in effect for a State, such State shall be deemed not to be listed in paragraph (b)(2)(iii)(B) of this section for purposes of part 97 of this chapter.

(*3*) The effectiveness of paragraph (b)(2)(iii)(C) of this section is stayed for sources in Minnesota, Nevada, and Utah and Indian country located within the borders of such States with regard to emissions occurring in 2023 and thereafter. While a stay under this paragraph (b)(2)(iii)(D)(*3*) is in effect for a State, such State shall be deemed not to be listed in paragraph (b)(2)(iii)(C) of this section for purposes of part 97 of this chapter.

(*4*) The effectiveness of paragraph (b)(2)(iii)(A) of this section is stayed for sources in Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia and Indian country located within the borders of such States with regard to emissions occurring in 2024 and thereafter. While a stay under this paragraph

(b)(2)(iii)(D)(*4*) is in effect for a State, such State shall be deemed not to be listed in paragraph (b)(2)(iii)(A) of this section for purposes of part 97 of this chapter for a control period after 2023.

(*5*) The effectiveness of paragraph (b)(2)(iii)(B) of this section is stayed for sources in Wisconsin and Indian country located within the borders of such State with regard to emissions occurring in 2024 and thereafter. While a stay under this paragraph (b)(2)(iii)(D)(*5*) is in effect for a State, such State shall be deemed not to be listed in paragraph (b)(2)(iii)(B) of this section for purposes of part 97 of this chapter for a control period after 2023.

(3) ***State-determined allocations of CSAPR NO_X Ozone Season Group 1 allowances for 2016.*** A State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_X Ozone Season Group 1 allowance allocation provisions replacing the provisions in § 97.511(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016, a list of CSAPR NO_X Ozone Season Group 1 units and the amount of CSAPR NO_X Ozone Season Group 1 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

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

(ii) The total amount of CSAPR NO_X Ozone Season Group 1 allowance allocations on the list must not exceed the amount, under § 97.510(a) of this chapter for the State and the control period in 2016, of the CSAPR NO_X Ozone Season Group 1 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

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

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

(v) Provided that:

(A) By October 17, 2011 or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 6, 2015, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(3)(i) through (iv) of this section by April 1, 2015 or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(3)(v)(A) of this section by April 1, 2015 or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015.

(4) ***Abbreviated SIP revisions replacing certain provisions of the Federal CSAPR NO_X Ozone Season Group 1 Trading Program.*** A State listed in paragraph (b)(2)(i)(A) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart

BBBBB of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

(i) [Reserved]

(ii) The State may adopt, as CSAPR NO_X Ozone Season Group 1 allowance allocation or auction provisions replacing the provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 1 allowances, and may adopt, in addition to the definitions in § 97.502 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_X Ozone Season Group 1 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 1 allowances for any such control period not exceeding the amount, under §§ 97.510(a) and 97.521 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 1 allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 1 allowances for any such control period to any CSAPR NO_X Ozone Season Group 1 units covered by § 97.511(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 3 to this paragraph;

Table 3 to Paragraph (b)(4)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
	year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 1 allowances for any such control period to any CSAPR NO_X Ozone Season Group 1 units covered by §§ 97.511(b)(1) and 97.512(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

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

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

(5) ***Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 1 Trading Programs.*** A State listed in paragraph (b)(2)(i)(A) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 1 Trading Program set forth in §§ 97.502 through 97.535 of this chapter, except that the SIP revision:

(i) [Reserved]

(ii) May adopt, as CSAPR NO_X Ozone Season Group 1 allowance allocation provisions replacing the provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 1 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 1 allowances for any such control period not exceeding the amount, under §§ 97.510(a) and 97.521 of this chapter for the State and

such control period, of the CSAPR NO_X Ozone Season Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 1 allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 1 allowances for any such control period to any CSAPR NO_X Ozone Season Group 1 units covered by § 97.511(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 4 to this paragraph;

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 1 allowances for any such control period to any CSAPR NO_X Ozone Season Group 1 units covered by §§ 97.511(b)(1) and 97.512(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

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

(iii) May adopt, in addition to the definitions in § 97.502 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_X Ozone Season Group 1 allowance allocation or auction provisions adopted under paragraph (b)(5)(ii) of this section;

(iv) May substitute the name of the State for the term "State" as used in subpart BBBBB of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.502 through 97.535 of this chapter; and

(v) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.502 through 97.535 of this chapter and must not include the provisions in §§ 97.511(b)(2) and (c)(5)(iii), 97.512(b), and 97.521(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vi) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.502 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.506(c)(2), and 97.525 of this chapter and the portions of other provisions of subpart BBBBB of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

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

(6) [Reserved]

(7) ***State-determined allocations of CSAPR NO_X Ozone Season Group 2 allowances for 2018.*** A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_X Ozone Season Group 2 allowance allocation provisions replacing the provisions in § 97.811(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2018, a list of CSAPR NO_X Ozone Season Group 2 units and the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and that commenced commercial operation before January 1, 2015;

(ii) The total amount of CSAPR NO_X Ozone Season Group 2 allowance allocations on the list must not exceed the amount, under § 97.810(a) of this chapter for the State and the control period in 2018, of the CSAPR NO_X Ozone Season Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

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

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

(v) Provided that:

(A) By December 27, 2016, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(7)(i) through (iv) of this section by April 1, 2017; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(7)(v)(A) of this section by April 1, 2017.

(8) ***Abbreviated SIP revisions replacing certain provisions of the Federal CSAPR NO_X Ozone Season Group 2 Trading Program.*** A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart EEEEE of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

(i)-(ii) [Reserved]

(iii) The State may adopt, as CSAPR NO_X Ozone Season Group 2 allowance allocation or auction provisions replacing the provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 2 allowances and may adopt, in addition to the definitions in § 97.802 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_X Ozone Season Group 2 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 2 allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by § 97.811(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X

Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 5 to this paragraph;

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2019 or 2020	June 1, 2018.
2021 or 2022	June 1, 2019.
2023 or 2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by §§ 97.811(b)(1) and 97.812(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(8)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter or § 97.526(d) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(8)(iii) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(8)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(8)(iii) of this section.

(9) ***Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 2 Trading Programs.*** A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 2 Trading Program set forth in §§ 97.802 through 97.835 of this chapter, except that the SIP revision:

(i)-(ii) [Reserved]

(iii) May adopt, as CSAPR NO_X Ozone Season Group 2 allowance allocation provisions replacing the provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 2 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 2 allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by § 97.811(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 6 to this paragraph;

Table 6 to Paragraph (b)(9)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2019 or 2020	June 1, 2018.
2021 or 2022	June 1, 2019.
2023 or 2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by §§ 97.811(b)(1) and 97.812(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(9)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter or § 97.526(d) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.802 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_X Ozone Season Group 2 allowance allocation or auction provisions adopted under paragraph (b)(9)(iii) of this section;

(v) May substitute the name of the State for the term "State" as used in subpart EEEEE of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.802 through 97.835 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.802 through 97.835 of this chapter and must not include the provisions in §§ 97.811(b)(2) and (c)(5)(iii), 97.812(b), and 97.821(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.802 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.806(c)(2), and 97.825 of this chapter and the portions of other provisions of subpart EEEEE of part 97 of this chapter referencing §§ 97.802, 97.806(c)(2), and 97.825 and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(9)(iii) through (vi) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(9)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(9)(iii) of this section.

(10) ***State-determined allocations of CSAPR NO_X Ozone Season Group 3 allowances for 2024.*** A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_X Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2024, a list of CSAPR NO_X Ozone Season Group 3 units and the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and that commenced commercial operation before January 1, 2021;

(ii) The total amount of CSAPR NO_X Ozone Season Group 3 allowance allocations on the list must not exceed the amount, under § 97.1010 of this chapter for the State and the control period in 2024, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country existing unit set-aside and the new unit set-aside;

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

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

(v) Provided that:

(A) By August 4, 2023, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(10)(i) through (iv) of this section by September 1, 2023; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(10)(v)(A) of this section by September 1, 2023.

(11) ***Abbreviated SIP revisions replacing certain provisions of the Federal CSAPR NO_X Ozone Season Group 3 Trading Program.*** A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart GGGGG of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

(i)-(ii) [Reserved]

(iii) The State may adopt, as CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2025 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 3 allowances and may adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010 and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country existing unit set-aside, the new unit set-aside, and the amount of any CSAPR NO_X Ozone Season Group 3 allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by § 97.1011(a)(1) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X

Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by June 1 of the year before the year of such control period; and

(C) [Reserved]

(D) Does not provide for any change, after the submission deadlines in paragraph (b)(11)(iii)(B) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) or (e) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(11)(iii) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(11)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(11)(iii) of this section.

(12) ***Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 3 Trading Programs.*** A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, except that the SIP revision:

(i)-(ii) [Reserved]

(iii) May adopt, as CSAPR NO_X Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2025 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 3 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010 and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country existing unit set-aside, the new unit set-aside, and the amount of any CSAPR NO_X Ozone Season Group 3 allowances already allocated and recorded by the Administrator;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by § 97.1011(a)(1) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by June 1 of the year before the year of such control period; and

(C) [Reserved]

(D) Does not provide for any change, after the submission deadlines in paragraph (b)(12)(iii)(B) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) or (e) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions adopted under paragraph (b)(12)(iii) of this section;

(v) May substitute the name of the State for the term "State" as used in subpart GGGGG of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.1002 through 97.1035 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.1002 through 97.1035 of this chapter and must not include the provisions in §§ 97.1011(a)(2), 97.1012, and 97.1021(g) through (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if before the Administrator's approval of the SIP revision any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority before the Administrator's approval of the SIP revision, the SIP revision must exclude the provisions in §§ 97.1002 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.1006(c)(2), and 97.1025 of this chapter and the portions of other provisions of subpart GGGGG of part 97 of this chapter referencing §§ 97.1002, 97.1006(c)(2), and 97.1025, and further provided that, if and when after the Administrator's approval of the SIP revision any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude these provisions and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(12)(iii) through (vi) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(12)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(12)(iii) of this section.

(13) ***Withdrawal of CSAPR FIP provisions relating to NO_X ozone season emissions; satisfaction of NO_X SIP Call requirements.*** Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section, paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section, or paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section for sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority—

(i) Except as provided in paragraph (b)(14) of this section, the provisions of paragraph (b)(2)(i), (ii), or (iii) of this section, as applicable, will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, unless the

Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

(ii) For a State listed in § 51.121(c) of this chapter, the State's adoption of the regulations included in such approved SIP revision will satisfy with regard to the sources subject to such regulations the requirement under § 51.121(r)(2) of this chapter for the State to revise its SIP to adopt control measures with regard to such sources, provided that the Administrator and the State continue to carry out their respective functions under such regulations.

(14) ***Continued applicability of certain federal trading program provisions for NO_X ozone season emissions.***

(i) Notwithstanding the provisions of paragraph (b)(13)(i) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR NO_X Ozone Season Group 1 Trading Program or State CSAPR NO_X Ozone Season Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart BBBBB of part 97 of this chapter, as amended, or subpart EEEEE of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.502 of this chapter or § 97.802 of this chapter;

(B) The provisions in § 97.510(a) of this chapter (concerning in part the amounts of the new unit set-asides);

(C) The provisions in §§ 97.511(b)(1) and 97.512(a) of this chapter or §§ 97.811(b)(1) and 97.812(a) of this chapter (concerning the procedures for administering the new unit set-asides), except where the State allocates or auctions CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances under an approved SIP revision;

(D) The provisions in § 97.511(c)(5) of this chapter or § 97.811(c)(5) of this chapter (concerning the disposition of incorrectly allocated CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances);

(E) The provisions in § 97.521(f), (g), and (i) of this chapter or § 97.821(f), (g), and (i) of this chapter (concerning the deadlines for recordation of allocations or auctions of CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances) and the provisions in paragraphs (b)(4)(ii)(B) and (C) and (b)(5)(ii)(B) and (C) of this section or paragraphs (b)(8)(iii)(B) and (C) and (b)(9)(iii)(B) and (C) of this section (concerning the deadlines for submission to the Administrator of State-determined allocations or auction results);

(F) The provisions in § 97.525(b) of this chapter or §§ 97.806(c)(2) and (3) and 97.825(b) of this chapter (concerning the procedures for administering the assurance provisions);

(G) The provisions in § 97.526(e) of this chapter or § 97.826(f) of this chapter (concerning the use of CSAPR NO_X Ozone Season Original Group 2 allowances, CSAPR NO_X Ozone Season Expanded Group 2 allowances, or CSAPR NO_X Ozone Season Group 3 allowances to

satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances or the use of CSAPR NO_X Ozone Season Expanded Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR NO_X Ozone Season Original Group 2 allowances); and

(H) The provisions in §§ 97.806(c), 97.824(a) and (d), and 97.825(a) of this chapter (concerning the situations for which compliance requirements are defined in terms of either CSAPR NO_X Ozone Season Original Group 2 allowances or CSAPR NO_X Ozone Season Expanded Group 2 allowances).

(ii) Notwithstanding the provisions of paragraph (b)(13)(i) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 1 allowances under subpart BBBBB of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter, to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation pursuant to paragraph (b)(2) or (b)(13)(i) of this section of the applicability of subpart BBBBB, EEEEE, or GGGGG of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State's SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR NO_X Ozone Season Group 1 allowances, CSAPR NO_X Ozone Season Group 2 allowances, and CSAPR NO_X Ozone Season Group 3 allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(A) The provisions of §§ 97.526(c), 97.826(c), and 97.1026(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 1 allowances, CSAPR NO_X Ozone Season Group 2 allowances, and CSAPR NO_X Ozone Season Group 3 allowances between certain Allowance Management System accounts under common control);

(B) The provisions of §§ 97.526(d), 97.826(d) and (e), and 97.1026(e) of this chapter (concerning the conversion of allowances of one type into allowances of another type, in the same or different quantities and issued for the same or different control periods, including conversions among CSAPR NO_X Ozone Season Group 1 allowances, CSAPR NO_X Ozone Season Original Group 2 allowances, CSAPR NO_X Ozone Season Expanded Group 2 allowances, and CSAPR NO_X Ozone Season Group 3 allowances); and

(C) The provisions of §§ 97.811(d) and (e) and 97.1011(d) of this chapter (concerning the recall of certain CSAPR NO_X Ozone Season Original Group 2 allowances and CSAPR NO_X Ozone Season Group 3 allowances).

(15) ***States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 1 Trading Program.*** The following States have SIP revisions approved by the Administrator under paragraph (b)(3), (4), or (5) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(3) of this section as replacing the CSAPR NO_X Ozone Season Group 1 allowance allocation provisions in § 97.511(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016: Alabama and Missouri.

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(4) of this section as replacing the CSAPR NO_X Ozone Season Group 1 allowance allocation provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2017 or any subsequent year: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Georgia.

(16) ***States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 2 Trading Program.***

(i) The following States have SIP revisions approved by the Administrator under paragraph (b)(7), (8), or (9) of this section:

(A) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(7) of this section as replacing the CSAPR NO_X Ozone Season Group 2 allowance allocation provisions in § 97.811(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2018: [none].

(B) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(8) of this section as replacing the CSAPR NO_X Ozone Season Group 2 allowance allocation provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2019 or any subsequent year: New York.

(C) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(9) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Alabama, Indiana, and Missouri.

(ii)

(A) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(ii)(B) of this section and any control period that begins after December 31, 2020, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter or in

any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section, except as otherwise provided in paragraph (b)(2)(ii)(D)(*1*) or (b)(14)(iii) of this section.

(B) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(ii)(C) of this section and any control period that begins after December 31, 2022, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section, except as otherwise provided in paragraph (b)(2)(ii)(D)(*2*) or (b)(14)(iii) of this section.

(17) ***States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 3 Trading Program.*** The following States have SIP revisions approved by the Administrator under paragraph (b)(10), (11), or (12) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(10) of this section as replacing the CSAPR NO_X Ozone Season Group 3 allowance allocation provisions in § 97.1011(a)(1) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2024: [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(11) of this section as replacing the CSAPR NO_X Ozone Season Group 3 allowance allocation provisions in § 97.1011(a)(1) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2025 or any subsequent year: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(12) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: [none].

[76 FR 48354, Aug. 8, 2011, as amended at 76 FR 80774, Dec. 27, 2011; 79 FR 71671, Dec. 3, 2014; 81 FR 74586, Oct. 26, 2016; 82 FR 45496, Sept. 29, 2017; 82 FR 46677, Oct. 6, 2017; 82 FR 47934, 47939, Oct. 13, 2017; 82 FR 57366, Dec. 5, 2017; 83 FR 64476, Dec. 17, 2018; 84 FR 8443, Mar. 8, 2019; 84 FR 38881, Aug. 8, 2019; 84 FR 66318, Dec. 4, 2019; 85 FR 7452, Feb. 10, 2020; 86 FR 23164, Apr. 30, 2021; 87 FR 52479, Aug. 26, 2022; 88 FR 36860, June 5, 2023; 88 FR 49302, July 31, 2023; 88 FR 67107, Sept. 29, 2023; 89 FR 87968, Nov. 6, 2024]

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

(a) ***General requirements for SO_2 emissions.*** The CSAPR SO_2 Group 1 Trading Program provisions and the CSAPR SO_2 Group 2 Trading Program provisions set forth respectively in subparts CCCCC and DDDDD of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of sulfur dioxide (SO_2) for sources meeting the applicability criteria set forth in subparts CCCCC and DDDDD, except as otherwise provided in this section.

(b) ***Applicability of CSAPR SO_2 Group 1 Trading Program provisions.*** The provisions of subpart CCCCC of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.

(c) ***Applicability of CSAPR SO_2 Group 2 Trading Program provisions.***

(1) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Kansas, Minnesota, Nebraska, and South Carolina.

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

(d) ***State-determined allocations of CSAPR SO_2 Group 1 allowances for 2016.*** A State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR SO_2 Group 1 allowance allocation provisions replacing the provisions in § 97.611(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016, a list of CSAPR SO_2 Group 1 units and the amount of CSAPR SO_2 Group 1 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

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

(2) The total amount of CSAPR SO_2 Group 1 allowance allocations on the list must not exceed the amount, under § 97.610(a) of this chapter for the State and the control period in 2016, of the CSAPR SO_2 Group 1 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

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

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

(5) Provided that:

(i) By October 17, 2011, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (d)(1) through (4) of this section by April 1, 2015; and

(ii) The State must submit to the Administrator a complete SIP revision described in paragraph (d)(5)(i) of this section by April 1, 2015.

(e) ***Abbreviated SIP revisions replacing certain provisions of the federal CSAPR SO_2 Group 1 Trading Program.*** A State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart CCCCC of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

(1) The State may adopt, as CSAPR SO_2 Group 1 allowance allocation or auction provisions replacing the provisions in §§ 97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO_2 Group 1 allowances and may adopt, in addition to the definitions in § 97.602 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR SO_2 Group 1 allowance allocation or auction provisions, if such methodology—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO_2 Group 1 allowances for any such control period not exceeding the amount, under §§ 97.610(a) and 97.621 of this chapter for the State and such control period, of the CSAPR SO_2 Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO_2 Group 1 allowances already allocated and recorded by the Administrator;

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 1 allowances for any such control period to any CSAPR SO_2 Group 1 units covered by § 97.611(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO_2 Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 1 to this paragraph;

TABLE 1 TO PARAGRAPH (e)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
	the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 1 allowances for any such control period to any CSAPR SO_2 Group 1 units covered by §§ 97.611(b)(1) and 97.612(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO_2 Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(iv) Does not provide for any change, after the submission deadlines in paragraphs (e)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart CCCCC of part 97 of this chapter;

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

(f) ***Full SIP revisions adopting State CSAPR SO_2 Group 1 Trading Programs.*** A State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR SO_2 Group 1 Trading Program set forth in §§ 97.602 through 97.635 of this chapter, except that the SIP revision:

(1) May adopt, as CSAPR SO_2 Group 1 allowance allocation or auction provisions replacing the provisions in §§ 97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO_2 Group 1 allowances and that—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO_2 Group 1 allowances for any such control period not exceeding the amount, under §§ 97.610(a) and 97.621 of this chapter for the State and such control period, of the CSAPR SO_2 Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO_2 Group 1 allowances already allocated and recorded by the Administrator;

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 1 allowances for any such control period to any CSAPR SO_2 Group 1 units covered by § 97.611(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO_2 Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 2 to this paragraph;

TABLE 2 TO PARAGRAPH (f)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 1 allowances for any such control period to any CSAPR SO_2 Group 1 units covered by §§ 97.611(b)(1) and 97.612(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO_2 Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(iv) Does not provide for any change, after the submission deadlines in paragraphs (f)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart CCCCC of part 97 of this chapter;

(2) May adopt, in addition to the definitions in § 97.602 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR SO_2 Group 1 allowance allocation or auction provisions adopted under paragraph (f)(1) of this section;

(3) May substitute the name of the State for the term “State” as used in subpart CCCCC of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.602 through 97.635 of this chapter; and

(4) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.602 through 97.635 of this chapter and must not include the provisions in §§ 97.611(b)(2) and (c)(5)(iii), 97.612(b), and 97.621(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(5) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.602 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.606(c)(2), and 97.625 of this chapter and the portions of other provisions of subpart CCCCC of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

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

(g) ***State-determined allocations of CSAPR SO_2 Group 2 allowances for 2016.*** A State listed in paragraph (c) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR SO_2 Group 2 allowance allocation provisions replacing the provisions in § 97.711(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016, a list of CSAPR SO_2 Group 2 units and the amount of CSAPR SO_2 Group 2 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

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

(2) The total amount of CSAPR SO_2 Group 2 allowance allocations on the list must not exceed the amount, under § 97.710(a) of this chapter for the State and the control period in 2016, of the CSAPR SO_2 Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

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

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

(5) Provided that:

(i) By October 17, 2011, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (g)(1) through (4) of this section by April 1, 2015; and

(ii) The State must submit to the Administrator a complete SIP revision described in paragraph (g)(5)(i) of this section by April 1, 2015.

(h) ***Abbreviated SIP revisions replacing certain provisions of the federal CSAPR SO_2 Group 2 Trading Program.*** A State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart DDDDD of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

(1) The State may adopt, as CSAPR SO_2 Group 2 allowance allocation or auction provisions replacing the provisions in §§ 97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO_2 Group 2 allowances and may adopt, in addition to the definitions in § 97.702 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR SO_2 Group 2 allowance allocation or auction provisions, if such methodology—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO_2 Group 2 allowances for any such control period not exceeding the amount, under §§ 97.710(a) and 97.721 of this chapter for the State and such control period, of the CSAPR SO_2 Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO_2 Group 2 allowances already allocated and recorded by the Administrator;

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 2 allowances for any such control period to any CSAPR SO_2 Group 2 units covered by § 97.711(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO_2 Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 3 to this paragraph;

TABLE 3 TO PARAGRAPH (h)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
	the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 2 allowances for any such control period to any CSAPR SO_2 Group 2 units covered by §§ 97.711(b)(1) and 97.712(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO_2 Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(iv) Does not provide for any change, after the submission deadlines in paragraphs (h)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart DDDDD of part 97 of this chapter;

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

(i) ***Full SIP revisions adopting State CSAPR SO_2 Group 2 Trading Programs.*** A State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c)(1), (g), and (h) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR SO_2 Group 2 Trading Program set forth in §§ 97.702 through 97.735 of this chapter, except that the SIP revision:

(1) May adopt, as CSAPR SO_2 Group 2 allowance allocation or auction provisions replacing the provisions in §§ 97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO_2 Group 2 allowances and that—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO_2 Group 2 allowances for any such control period not exceeding the amount, under §§ 97.710(a) and 97.721 of this chapter for the State and such control period, of the CSAPR SO_2 Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO_2 Group 2 allowances already allocated and recorded by the Administrator;

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 2 allowances for any such control period to any CSAPR SO_2 Group 2 units covered by § 97.711(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO_2 Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 4 to this paragraph;

Table 4 to Paragraph (i)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO_2 Group 2 allowances for any such control period to any CSAPR SO_2 Group 2 units covered by §§ 97.711(b)(1) and 97.712(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO_2 Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and

(iv) Does not provide for any change, after the submission deadlines in paragraphs (i)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart DDDDD of part 97 of this chapter;

(2) May adopt, in addition to the definitions in § 97.702 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR SO_2 Group 2 allowance allocation or auction provisions adopted under paragraph (i)(1) of this section;

(3) May substitute the name of the State for the term “State” as used in subpart DDDDD of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.702 through 97.735 of this chapter; and

(4) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.702 through 97.735 of this chapter and must not include the provisions in §§ 97.711(b)(2) and (c)(5)(iii), 97.712(b), and 97.721(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(5) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.702 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.706(c)(2), and 97.725 of this chapter and the portions of other provisions of subpart DDDDD of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

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

(j) ***Withdrawal of CSAPR FIP provisions relating to SO_2 emissions.*** Except as provided in paragraph (k) of this section, following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section or paragraphs (a), (c)(1), (g), and (h) of this section for sources in the State and Indian country within the borders of the State subject to the State's SIP authority, the provisions of paragraph (b) or (c)(1) of this section, as applicable, will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(k) ***Continued applicability of certain federal trading program provisions for SO_2 emissions.***

(1) Notwithstanding the provisions of paragraph (j) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR SO_2 Group 1 Trading Program or State CSAPR SO_2 Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart CCCCC of part 97 of this chapter, as amended, or subpart DDDDD of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(i) The definitions in § 97.602 of this chapter or § 97.702 of this chapter;

(ii) The provisions in § 97.610(a) of this chapter or § 97.710(a) of this chapter (concerning in part the amounts of the new unit set-asides);

(iii) The provisions in §§ 97.611(b)(1) and 97.612(a) of this chapter or §§ 97.711(b)(1) and 97.712(a) of this chapter (concerning the procedures for administering the new unit set-asides), except where the State allocates or auctions CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances under an approved SIP revision;

(iv) The provisions in § 97.611(c)(5) of this chapter or § 97.711(c)(5) of this chapter (concerning the disposition of incorrectly allocated CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances);

(v) The provisions in § 97.621(f), (g), and (i) of this chapter or § 97.721(f), (g), and (i) of this chapter (concerning the deadlines for recordation of allocations or auctions of CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances) and the provisions in paragraphs (e)(1)(ii) and (iii) and (f)(1)(ii) and (iii) of this section or paragraphs (h)(1)(ii) and (iii) and (i)(1)(ii) and (iii) of this section (concerning the deadlines for submission to the Administrator of State-determined allocations or auction results); and

(vi) The provisions in § 97.625(b) of this chapter or § 97.725(b) of this chapter (concerning the procedures for administering the assurance provisions).

(2) Notwithstanding the provisions of paragraph (j) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR SO_2 Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR SO_2 Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(3) Notwithstanding any discontinuation pursuant to paragraph (c)(2) or (j) of this section of the applicability of subpart CCCCC or DDDDD of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State's SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR SO_2 Group 1 allowances and CSAPR SO_2 Group 2 allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(i) The provisions of §§ 97.626(c) and 97.726(c) of this chapter (concerning the transfer of CSAPR SO_2 Group 1 allowances and CSAPR SO_2 Group 2 allowances between certain Allowance Management System accounts under common control).

(ii) [Reserved]

(l) ***States with approved SIP revisions addressing the CSAPR SO_2 Group 1 Trading Program.*** The following States have SIP revisions approved by the Administrator under paragraph (d), (e), or (f) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (d) of this section as replacing the CSAPR SO_2 Group 1 allowance allocation provisions in § 97.611(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016: [none].

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (e) of this section as replacing the CSAPR SO_2 Group 1 allowance allocation provisions in §§ 97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2017 or any subsequent year: Missouri and New York.

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (f) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Indiana, Kentucky, and Missouri.

(m) ***States with approved SIP revisions addressing the CSAPR SO_2 Group 2 Trading Program.*** The following States have SIP revisions approved by the Administrator under paragraph (g), (h), or (i) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (g) of this section as replacing the CSAPR SO_2 Group 2 allowance allocation provisions in § 97.711(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2016: Alabama and Nebraska.

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (h) of this section as replacing the CSAPR SO_2 Group 2 allowance allocation provisions in §§ 97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2017 or any subsequent year: [none].

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (i) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c)(1), (g), and (h) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Alabama, Georgia, and South Carolina.

[76 FR 48357, Aug. 8, 2011, as amended at 77 FR 10334, Feb. 21, 2012; 79 FR 71671, Dec. 3, 2014; 81 FR 74586 and 74591, Oct. 26, 2016; 82 FR 45496, Sept. 29, 2017; 82 FR 47934, 47939, Oct. 13, 2017; 82 FR 57366, Dec. 5, 2017; 83 FR 64476, Dec. 17, 2018; 84 FR 66318, Dec. 4, 2019; 85 FR 7452, Feb. 10, 2020; 86 FR 23171, Apr. 30, 2021; 87 FR 52480, Aug. 26, 2022; 88 FR 36867, June 5, 2023]

§ 52.40 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from sources not subject to the CSAPR ozone season trading program?

(a) ***Purpose.*** This section establishes Federal Implementation Plan requirements for new and existing units in the industries specified in paragraph (b) of this section to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 8-hour ozone National Ambient Air Quality Standards in other states pursuant to 42 U.S.C. 7410(a)(2)(D)(i)(I).

(b) ***Definitions.*** The terms used in this section and §§ 52.41 through § 52.46 are defined as follows:

Calendar year means the period between January 1 and December 31, inclusive, for a given year.

Existing affected unit means any affected unit for which construction commenced before August 4, 2023.

New affected unit means any affected unit for which construction commenced on or after August 4, 2023.

Operator means any person who operates, controls, or supervises an affected unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such affected unit.

Owner means any holder of any portion of the legal or equitable title in an affected unit.

Potential to emit means the maximum capacity of a unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a unit.

Rolling average means the weighted average of all data, meeting quality assurance and quality control (QA/QC) requirements in this part or otherwise normalized, collected during the applicable averaging period. The period of a rolling average stipulates the frequency of data averaging and reporting. To demonstrate compliance with an operating parameter a 30-day rolling average period requires calculation of a new average value each operating day and shall include the average of all the hourly averages of the specific operating parameter. For demonstration of compliance with an emissions limit based on pollutant concentration, a 30-day rolling average is comprised of the average of all the hourly average concentrations over the previous 30 operating days. For demonstration of compliance with an emissions limit based on lbs-pollutant per production unit, the 30-day rolling average is calculated by summing the hourly mass emissions over the previous 30 operating days, then dividing that sum by the total production during the same period.

(c) ***General requirements.***

(1) The NO_X emissions limitations or emissions control requirements and associated compliance requirements for the following listed source categories not subject to the CSAPR ozone season trading program constitute the Federal Implementation Plan provisions that relate to emissions of NO_X during the ozone season (defined as May 1 through September 30 of a calendar year): §§ 52.41 for engines in the Pipeline Transportation of Natural Gas Industry, 52.42 for kilns in the Cement and Concrete Product Manufacturing Industry, 52.43 for reheat furnaces in the Iron and Steel Mills and Ferroalloy Manufacturing Industry, 52.44 for furnaces in the Glass and Glass Product Manufacturing Industry, 52.45 for boilers in the Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills industries, and 52.46 for Municipal Waste Combustors.

(2) The provisions of this section or § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 apply to affected units located in each of the following States, including Indian country located within the borders of such States, beginning in the 2026 ozone season and in each subsequent ozone season: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia.

(3) The testing, monitoring, recordkeeping, and reporting requirements of this section or § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 only apply during the ozone season, except as otherwise specified in these sections. Additionally, if an owner or operator of an affected unit chooses to conduct a performance or compliance test outside of the ozone season, all recordkeeping, reporting, and notification requirements associated with that test shall apply, without regard to whether they occur during the ozone season.

(4) Notwithstanding any other provision of this part, the effectiveness of paragraphs (a) and (b), (c)(1) through (3), and (d) through (g) of this section and §§ 52.41 through 52.46 is stayed for sources located in Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia, including Indian country located within the borders of such States.

(d) ***Requests for extension of compliance.***

(1) The owner or operator of an existing affected unit under § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 that cannot comply with the applicable requirements in those sections by May 1, 2026, due to circumstances entirely beyond the owner or operator's control, may request an initial compliance extension to a date certain no later than May 1, 2027. The extension request must contain a demonstration of necessity consistent with the requirements of paragraph (d)(3) of this section.

(2) If, after the EPA has granted a request for an initial compliance extension, the source remains unable to comply with the applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 by the extended compliance date due to circumstances entirely beyond the owner or operator's control, the owner or operator may apply for a second compliance extension to a date certain no later than May 1, 2029. The extension request must contain an updated demonstration of necessity consistent with the requirements of paragraph (d)(3) of this section.

(3) Each request for a compliance extension shall demonstrate that the owner or operator has taken all steps possible to install the controls necessary for compliance with the applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 by the applicable compliance date and shall:

(i) Identify each affected unit for which the owner or operator is seeking the compliance extension;

(ii) Identify and describe the controls to be installed at each affected unit to comply with the applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46;

(iii) Identify the circumstances entirely beyond the owner or operator's control that necessitate additional time to install the identified controls;

(iv) Identify the date(s) by which on-site construction, installation of control equipment, and/or process changes will be initiated;

(v) Identify the owner or operator's proposed compliance date. A request for an initial compliance extension under paragraph (d)(1) of this section must specify a proposed compliance date no later than May 1, 2027, and state whether the owner or operator anticipates a need to request a second compliance extension. A request for a second compliance extension under paragraph (d)(2) of this section must specify a proposed compliance date no later than May 1, 2029, and identify additional actions taken by the owner or operator to ensure that the affected unit(s) will be in compliance with the applicable requirements in this section by that proposed compliance date;

(vi) Include all information obtained from control technology vendors demonstrating that the identified controls cannot be installed by the applicable compliance date;

(vii) Include any and all contract(s) entered into for the installation of the identified controls or an explanation as to why no contract is necessary or obtainable; and

(viii) Include any permit(s) obtained for the installation of the identified controls or, where a required permit has not yet been issued, a copy of the permit application submitted to the permitting authority and a statement from the permitting authority identifying its anticipated timeframe for issuance of such permit(s).

(4) Each request for a compliance extension shall be submitted via the Compliance and Emissions Data Reporting Interface (CEDRI) or analogous electronic submission system provided by the EPA no later than 180 days prior to the applicable compliance date. Until an extension has been granted by the Administrator under this section, the owner or operator of an affected unit shall comply with all applicable requirements of this section and shall remain subject to the May 1, 2026 compliance date or the initial extended compliance date, as applicable. A denial will be effective as of the date of denial.

(5) The owner or operator of an affected unit who has requested a compliance extension under this paragraph (d)(5) and is required to have a title V permit shall apply to have the relevant title V permit revised to incorporate the conditions of the extension of compliance. The conditions of a compliance extension granted under this paragraph (d)(5) will be incorporated into the affected unit's title V permit according to the provisions of an EPA-approved state operating permit program or the Federal title V regulations in 40 CFR part 71, whichever apply.

(6) Based on the information provided in any request made under paragraph (d) of this section or other information, the Administrator may grant an extension of time to comply with applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 consistent with the provisions of paragraph (d)(1) or (2) of this section. The decision to grant an extension will be provided by notification via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will identify each affected unit covered by the extension; specify the termination date of the extension; and specify any additional conditions that the Administrator deems necessary to ensure timely installation of the necessary controls (*e.g.,* the date(s) by which on-site construction, installation of control equipment, and/or process changes will be initiated).

(7) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA to the owner or operator of an affected unit who has requested a compliance extension under this paragraph (d)(7) whether the submitted request is complete, that is, whether the request contains sufficient information to make a determination, within 60 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplementary information.

(8) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA, which shall be publicly available, to the owner or operator of a decision to grant or intention to deny a request for a compliance extension within 60 calendar days after providing written notification pursuant to paragraph (d)(7) of this section that the submitted request is complete.

(9) Before denying any request for an extension of compliance, the Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA to the owner or operator in writing of the Administrator's intention to issue the denial, together with:

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the owner or operator to present via the CEDRI or analogous electronic submission system provided by the EPA, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(10) The Administrator's final decision to deny any request for an extension will be provided via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will set forth the specific grounds on which the denial is based. The final decision will be made within 60 calendar days after presentation of additional information or argument (if the request is complete), or within 60 calendar days after the deadline for the submission of additional information or argument under paragraph (d)(9)(ii) of this section, if no such submission is made.

(11) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Clean Air Act (CAA or the Act).

(e) ***Requests for case-by-case emissions limits.***

(1) The owner or operator of an existing affected unit under § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 that cannot comply with the applicable requirements in those sections due to technical impossibility or extreme economic hardship may submit to the Administrator, by August 5, 2024, a request for approval of a case-by-case emissions limit. The request shall contain information sufficient for the Administrator to confirm that the affected unit is unable to comply with the applicable emissions limit, due to technical impossibility or extreme economic hardship, and to establish an appropriate alternative case-by-case emissions limit for the affected unit. Until a case-by-case emissions limit has been approved by the Administrator under this section, the owner or operator shall remain subject to all applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46. A denial will be effective as of the date of denial.

(2) Each request for a case-by-case emissions limit shall include, but not be limited to, the following:

(i) A demonstration that the affected unit cannot achieve the applicable emissions limit with available control technology due to technical impossibility or extreme economic hardship.

(A) A demonstration of technical impossibility shall include:

(*1*) Uncontrolled NO_X emissions for the affected unit established with a CEMS, or stack tests obtained during steady state operation in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii)(2), or 65.158(a)(2) and available at the EPA's website (*https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods*), or other methods and procedures approved by the EPA through notice-and-comment rulemaking; and

(*2*) A demonstration that the affected unit cannot meet the applicable emissions limit even with available control technology, including:

(*i*) Stack test data or other emissions data for the affected unit; or

(*ii*) A third-party engineering assessment demonstrating that the affected unit cannot meet the applicable emissions limit with available control technology.

(B) A demonstration of extreme economic hardship shall include at least three vendor estimates of the costs of installing control technology necessary to meet the applicable emissions limit and other information that demonstrates, to the satisfaction of the Administrator, that the cost of complying with the applicable emissions limit would present an extreme economic hardship relative to the costs borne by other comparable sources in the industry.

(ii) An analysis of available control technology options and a proposed case-by-case emissions limit that represents the lowest emissions limitation technically achievable by the affected unit without causing extreme economic hardship relative to the costs borne by other comparable sources in the industry. The owner or operator may propose additional measures to reduce NO_X emissions, such as operational standards or work practice standards.

(iii) Calculations of the NO_X emissions reduction to be achieved through implementation of the proposed case-by-case emissions limit and any additional proposed measures, the difference between this NO_X emissions reduction level and the NO_X emissions reductions that would have occurred if the affected unit complied with the applicable emissions limitations in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46, and a description of the methodology used for these calculations.

(3) The owner or operator of an affected unit who has requested a case-by-case emissions limit under this paragraph (e)(3) and is required to have a title V permit shall apply to have the relevant title V permit revised to incorporate the case-by-case emissions limit. Any case-by-case emissions limit approved under this paragraph (e)(3) will be incorporated into the affected unit's title V permit according to the provisions of an EPA-approved state operating permit program or the Federal title V regulations in 40 CFR part 71, whichever apply.

(4) Based on the information provided in any request made under this paragraph (e)(4) or other information, the Administrator may approve a case-by-case emissions limit that will apply to an affected unit in lieu of the applicable emissions limit in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46. The decision to approve a case-by-case emissions limit will be provided via the CEDRI or analogous electronic submission system provided by the EPA in paragraph (d) of this section and publicly available, and will identify each affected unit covered by the case-by-case emissions limit.

(5) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA in paragraph (d) of this section to the owner or operator of an affected unit who has requested a case-by-case emissions limit under this paragraph (e)(5) whether the submitted request is complete, that is, whether the request contains sufficient information to make a determination, within 60 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplementary information.

(6) The Administrator will provide notification via the CEDRI or analogous electronic submission system described by the EPA in paragraph (d) of this section, which shall be publicly available, to the owner or operator of a decision to approve or intention to deny the request within 60 calendar days after providing notification pursuant to paragraph (e)(5) of this section that the submitted request is complete.

(7) Before denying any request for a case-by-case emissions limit, the Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA to the owner or operator in writing of the Administrator's intention to issue the denial, together with:

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the owner or operator to present via the CEDRI or analogous electronic submission system provided by the EPA, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(8) The Administrator's final decision to deny any request for a case-by-case emissions limit will be provided by notification via the CEDRI or analogous electronic submission system provided by the EPAand publicly available, and will set forth the specific grounds on which the denial is based. The final decision will be made within 60 calendar days after presentation of additional information or argument (if the request is complete), or within 60 calendar days after the deadline for the submission of additional information or argument under paragraph (e)(7)(ii) of this section, if no such submission is made.

(9) The approval of a case-by-case emissions limit under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(f) ***Recordkeeping requirements.***

(1) The owner or operator of an affected unit subject to the provisions of this section or § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 shall maintain files of all information (including all reports and notifications) required by these sections recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(2) Any records required to be maintained by § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(g) ***CEDRI reporting requirements.***

(1) You shall submit the results of the performance test following the procedures specified in paragraphs (g)(1)(i) through (iii) of this section:

(i) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test. Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46, which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(ii) Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test. The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii)

(A) The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (g)(1) or (2) of this section, you should submit a complete file, including information claimed to be CBI, to the EPA.

(B) The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website.

(C) Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

(D) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address *oaqpscbi@epa.gov*, and as described in this paragraph (g), should include clear CBI markings and be flagged to the attention of Lead of 2015 Ozone Transport FIP. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link.

(E) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Lead of 2015 Ozone Transport FIP. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(F) All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(G) You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described in paragraphs (g)(1) and (2) of this section.

(2) Annual reports must be submitted via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46.

(3) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(3)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(4) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (g)(4)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected unit, its contractors, or any entity controlled by the affected unit that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected unit (*e.g.,* large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

[88 FR 36869, June 5, 2023, as amended at 88 FR 49303, July 31, 2023; 88 FR 67107, Sept. 29, 2023; 89 FR 87968, Nov. 6, 2024]

§ 52.41 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Pipeline Transportation of Natural Gas Industry?

(a) ***Definitions.*** All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means an engine meeting the applicability criteria of this section.

Cap means the total amount of NO_X emissions, in tons per day on a 30-day rolling average basis, that is collectively allowed from all of the affected units covered by a Facility-Wide Averaging Plan and is calculated as the sum each affected unit's NO_X emissions at the emissions limit applicable to such unit under paragraph (c) of this section, converted to tons per day in accordance with paragraph (d)(3) of this section.

Emergency engine means any stationary reciprocating internal combustion engine (RICE) that meets all of the criteria in paragraphs (i) and (ii) of this definition. All emergency stationary RICE must comply with the requirements specified in paragraph (b)(1) of this section in order to be considered emergency engines. If the engine does not comply with the requirements specified in paragraph (b)(1), it is not considered an emergency engine under this section.

(i) The stationary engine is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc.

(ii) The stationary RICE is operated under limited circumstances for purposes other than those identified in paragraph (i) of this definition, as specified in paragraph (b)(1) of this section.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part

of the same industrial grouping if they belong to the same "Major Group" (*i.e.,* which have the same first two digit code as described in the Standard Industrial Classification Manual, 1987). For purposes of this section, a facility may not extend beyond the 20 states identified in § 52.40(b)(2).

Four stroke means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution.

ISO conditions means 288 Kelvin (15 °C), 60 percent relative humidity, and 101.3 kilopascals pressure.

Lean burn means any two-stroke or four-stroke spark ignited reciprocating internal combustion engine that does not meet the definition of a rich burn engine.

Local Distribution Companies (LDCs) are companies that own or operate distribution pipelines, but not interstate pipelines or intrastate pipelines, that physically deliver natural gas to end users and that are within a single state that are regulated as separate operating companies by State public utility commissions or that operate as independent municipally-owned distribution systems. LDCs do not include pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

Local Distribution Company (LDC) custody transfer station means a metering station where the LDC receives a natural gas supply from an upstream supplier, which may be an interstate transmission pipeline or a local natural gas producer, for delivery to customers through the LDC's intrastate transmission or distribution lines.

Nameplate rating means the manufacturer's maximum design capacity in horsepower (hp) at the installation site conditions. Starting from the completion of any physical change in the engine resulting in an increase in the maximum output (in hp) that the engine is capable of producing on a steady state basis and during continuous operation, such increased maximum output shall be as specified by the person conducting the physical change.

Natural gas means a fluid mixture of hydrocarbons (*e.g.,* methane, ethane, or propane) or non-hydrocarbons, composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous state under ISO conditions. Natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable CO_2 content or heating value.

Natural gas-fired means that greater than or equal to 90% of the engine's heat input, excluding recirculated or recuperated exhaust heat, is derived from the combustion of natural gas.

Natural gas processing plant means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

Natural gas production facility means all equipment at a single stationary source directly associated with one or more natural gas wells upstream of the natural gas processing plant. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

Operating day means a 24-hour period beginning at 12:00 midnight during which any fuel is combusted at any time in the engine.

Pipeline transportation of natural gas means the movement of natural gas through an interconnected network of compressors and pipeline components, including the compressor and pipeline network used to transport the natural gas from processing plants over a distance (intrastate or interstate) to and from storage facilities, to large natural gas end-users, and prior to delivery to a "local distribution company custody transfer station" (as defined in this section) of an LDC that provides the natural gas to end-users. *Pipeline transportation of natural gas* does not include natural gas production facilities, natural gas processing plants, or the portion of a compressor and pipeline network that is upstream of a natural gas processing plant.

Reciprocating internal combustion engine (RICE) means a reciprocating engine in which power, produced by heat and/or pressure that is developed in the engine combustion chambers by the burning of a mixture of air and fuel, is subsequently converted to mechanical work.

Rich burn means any four-stroke spark ignited reciprocating internal combustion engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1. Internal combustion engines originally manufactured as rich burn engines but modified with passive emissions control technology for nitrogen oxides (NO_X) (such as pre-combustion chambers) will be considered lean burn engines. Existing affected unit where there are no manufacturer's recommendations regarding air/fuel ratio will be considered rich burn engines if the excess oxygen content of the exhaust at full load conditions is less than or equal to 2 percent.

Spark ignition means a reciprocating internal combustion engine utilizing a spark plug (or other sparking device) to ignite the air/fuel mixture and with operating characteristics significantly similar to the theoretical Otto combustion cycle.

Stoichiometric means the theoretical air-to-fuel ratio required for complete combustion.

Two stroke means a type of reciprocating internal combustion engine which completes the power cycle in a single crankshaft revolution by combining the intake and compression operations into one stroke (one-half revolution) and the power and exhaust operations into a second stroke. This system requires auxiliary exhaust scavenging of the combustion products and inherently runs lean (excess of air) of stoichiometry.

(b) ***Applicability.*** You are subject to the requirements under this section if you own or operate a new or existing natural gas-fired spark ignition engine, other than an emergency engine, with a nameplate rating of 1,000 hp or greater that is used for pipeline transportation of natural gas and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s).

(1) For purposes of this section, the owner or operator of an emergency stationary RICE must operate the RICE according to the requirements in paragraphs (b)(1)(i) through (iii) of this section to be treated as an emergency stationary RICE. In order for stationary RICE to be treated as an emergency RICE under this subpart, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for up to 50 hours per year, as described in paragraphs (b)(1)(i) through (iii), is prohibited. If you do not operate the RICE according to the requirements in paragraphs (b)(1)(i) through (iii), the RICE will not be considered an emergency engine under this section and must meet all requirements for affected units in this section.

(i) There is no time limit on the use of emergency stationary RICE in emergency situations.

(ii) The owner or operator may operate your emergency stationary RICE for maintenance checks and readiness testing for a maximum of 100 hours per calendar year, provided that the tests are recommended by a Federal, state, or local government agency, the manufacturer, the vendor, or the insurance company associated with the engine. Any operation for non-emergency situations as allowed by paragraph (b)(1)(iii) of this section counts as part of the 100 hours per calendar year allowed by paragraph (b)(1)(ii) of this section. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records confirming that Federal, state, or local standards require maintenance and testing of emergency RICE beyond 100 hours per calendar year. Any approval of a petition for additional hours granted by the Administrator under 40 CFR part 63, subpart ZZZZ, shall constitute approval by the Administrator of the same petition under this paragraph (b)(1)(ii).

(iii) Emergency stationary RICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing provided in paragraph (b)(1)(ii) of this section.

(2) If you own or operate a natural gas-fired two stroke lean burn spark ignition engine manufactured after July 1, 2007 that is meeting the applicable emissions limits in 40 CFR part 60, subpart JJJJ, table 1, the engine is not an affected unit under this section and you do not have to comply with the requirements of this section.

(3) If you own or operate a natural gas-fired four stroke lean or rich burn spark ignition engine manufactured after July 1, 2010, that is meeting the applicable emissions limits in 40 CFR part 60, subpart JJJJ, table 1, the engine is not an affected unit under this section and you do not have to comply with the requirements of this section.

(c) ***Emissions limitations.*** If you are the owner or operator of an affected unit, you must meet the following emissions limitations on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) Natural gas-fired four stroke rich burn spark ignition engine: 1.0 grams per hp-hour (g/hp-hr);

(2) Natural gas-fired four stroke lean burn spark ignition engine: 1.5 g/hp-hr; and

(3) Natural gas-fired two stroke lean burn spark ignition engine: 3.0 g/hp-hr.

(d) ***Facility-Wide Averaging Plan.*** If you are the owner or operator of a facility containing more than one affected unit, you may submit a request via the CEDRI or analogous electronic submission system provided by the EPA to the Administrator for approval of a proposed Facility-Wide Averaging Plan as an alternative means of compliance with the applicable emissions limits in paragraph (c) of this section. Any such request shall be submitted to the Administrator on or before October 1st of the year prior to each emissions averaging year. The Administrator will approve a proposed Facility-Wide Averaging Plan submitted under this paragraph (d) if the Administrator determines that the proposed Facility-Wide Averaging Plan meets the requirements of this paragraph (d), will provide total emissions reductions equivalent to or greater than those achieved by the applicable emissions limits in paragraph (c), and identifies satisfactory means for determining initial and continuous compliance, including appropriate testing, monitoring, recordkeeping, and reporting requirements. You may only include affected units (*i.e.,* engines meeting the applicability criteria in paragraph (b) of this section) in a Facility-Wide Averaging

Plan. Upon EPA approval of a proposed Facility-Wide Averaging Plan, you cannot withdraw any affected unit listed in such plan, and the terms of the plan may not be changed unless approved in writing by the Administrator.

(1) Each request for approval of a proposed Facility-Wide Averaging Plan shall include, but not be limited to:

(i) The address of the facility;

(ii) A list of all affected units at the facility that will be covered by the plan, identified by unit identification number, the engine manufacturer's name, and model;

(iii) For each affected unit, a description of any existing NO_X emissions control technology and the date of installation, and a description of any NO_X emissions control technology to be installed and the projected date of installation;

(iv) Identification of the emissions cap, calculated in accordance with paragraph (d)(3) of this section, that all affected units covered by the proposed Facility-Wide Averaging Plan will be subject to during the ozone season, together with all assumptions included in such calculation; and

(iv) Adequate provisions for testing, monitoring, recordkeeping, and reporting for each affected unit.

(2) Upon the Administrator's approval of a proposed Facility-Wide Averaging Plan, the owner or operator of the affected units covered by the Facility-Wide Averaging Plan shall comply with the cap identified in the plan in lieu of the emissions limits in paragraph (c) of this section. You will be in compliance with the cap if the sum of NO_X emissions from all units covered by the Facility-Wide Averaging Plan, in tons per day on a 30-day rolling average basis, is less than or equal to the cap.

(3) The owner or operator will calculate the cap according to equation 1 to this paragraph (d)(3). You will monitor and record daily hours of engine operation for use in calculating the cap on a 30-day rolling average basis. You will base the hours of operation on hour readings from a non-resettable hour meter or an equivalent monitoring device.

Equation 1 to Paragraph (d)(3)

$$Cap\ (tons\ per\ day) = 907{,}184.74\ x \sum_{i=1}^{N} (R_{li}\ x\ DC\ x\ H_i)$$

Where:

H_i = the average daily operating hours based on the highest consecutive 30-day period during the ozone season of the two most recent years preceding the emissions averaging year (hours).

i = each affected unit included in the Cap.

N = number of affected units.

DC = the engine manufacturer's design maximum capacity in horsepower (hp) at the installation site conditions.

R_{li} = the emissions limit for each affected unit from paragraph (c) of this section (grams/hp-hr).

(i) Any affected unit for which less than two years of operating data are available shall not be included in the Facility-Wide Averaging Plan unless the owner or operator extrapolates the available operating data for the affected unit to two years of operating data, for use in calculating the emissions cap in accordance with paragraph (d)(3) of this section.

(ii) [Reserved]

(4) The owner or operator of an affected units covered by an EPA-approved Facility-Wide Averaging Plan will be in violation of the cap if the sum of NO_X emissions from all such units, in tons per day on a 30-day rolling average basis, exceeds the cap. Each day of noncompliance by each affected unit covered by the Facility-Wide Averaging Plan shall be a violation of the cap until corrective action is taken to achieve compliance.

(e) ***Testing and monitoring requirements.***

(1) If you are the owner or operator of an affected unit subject to a NO_X emissions limit under paragraph (c) of this section, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions.

(2) If you are the owner or operator of an affected unit and are operating a NO_X continuous emissions monitoring system (CEMS) that monitors NO_X emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_X emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_X emissions and either oxygen (O_2) or carbon dioxide (CO_2).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_X emissions rates measured by the CEMS shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits in this section.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_X emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3)

(i) If you are the owner or operator of a new affected unit, you must conduct an initial performance test within six months of engine startup and conduct subsequent performance tests every twelve months thereafter to demonstrate compliance. If pollution control equipment is installed to comply with a NO_X emissions limit in paragraph (c) of this section, however, the initial performance test shall be conducted within 90 days of such installation.

(ii) If you are the owner or operator of an existing affected unit, you must conduct an initial performance test within six months of becoming subject to an emissions limit under paragraph (c) of this section and conduct subsequent performance tests every twelve months thereafter to demonstrate compliance. If pollution control equipment is installed to comply with a NO_X emissions limit in paragraph (c) of this section, however, the initial performance test shall be conducted within 90 days of such installation.

(iii) If you are the owner or operator of a new or existing affected unit that is only operated during peak demand periods outside of the ozone season and the engine's hours of operation during the ozone season are 50 hours or less, the affected unit is not subject to the testing and monitoring requirements of this paragraph (e)(3)(iii) as long as you record and report your hours of operation during the ozone season in accordance with paragraphs (f) and (g) of this section.

(iv) If you are the owner or operator of an affected unit, you must conduct all performance tests consistent with the requirements of 40 CFR 60.4244 in accordance with the applicable reference test methods identified in table 2 to subpart JJJJ of 40 CFR part 60, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (*https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods*), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. To determine compliance with the NO_X emissions limit in paragraph (c) of this section, the emissions rate shall be calculated in accordance with the requirements of 40 CFR 60.4244(d).

(4) If you are the owner or operator of an affected unit that has a non-selective catalytic reduction (NSCR) control device to reduce emissions, you must:

(i) Monitor the inlet temperature to the catalyst daily and conduct maintenance if the temperature is not within the observed inlet temperature range from the most recent performance test or the temperatures specified by the manufacturer if no performance test was required by this section; and

(ii) Measure the pressure drop across the catalyst monthly and conduct maintenance if the pressure drop across the catalyst changes by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the most recent performance test.

(5) If you are the owner of operator of an affected unit not using an NSCR control device to reduce emissions, you are required to conduct continuous parametric monitoring to assure compliance with the applicable emissions limits according to the requirements in paragraphs (e)(5)(i) through (vi) of this section.

(i) You must prepare a site-specific monitoring plan that includes all of the following monitoring system design, data collection, and quality assurance and quality control elements:

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations.

(B) Sampling interface (*e.g.,* thermocouple) location such that the monitoring system will provide representative measurements.

(C) Equipment performance evaluations, system accuracy audits, or other audit procedures.

(D) Ongoing operation and maintenance procedures in accordance with the requirements of paragraph (e)(1) of this section.

(E) Ongoing recordkeeping and reporting procedures in accordance with the requirements of paragraphs (f) and (g) of this section.

(ii) You must continuously monitor the selected operating parameters according to the procedures in your site-specific monitoring plan.

(iii) You must collect parametric monitoring data at least once every 15 minutes.

(iv) When measuring temperature range, the temperature sensor must have a minimum tolerance of 2.8 degrees Celsius (5 degrees Fahrenheit) or 1 percent of the measurement range, whichever is larger.

(v) You must conduct performance evaluations, system accuracy audits, or other audit procedures specified in your site-specific monitoring plan at least annually.

(vi) You must conduct a performance evaluation of each parametric monitoring device in accordance with your site-specific monitoring plan.

(6) If you are the owner or operator of an affected unit that is only operated during peak periods outside of the ozone season and your hours of operation during the ozone season are 0, you are not subject to the testing and monitoring requirements of this paragraph (e)(6) so long as you record and report your hours of operation during the ozone season in accordance with paragraphs (f) and (g) of this section.

(f) ***Recordkeeping requirements.*** If you are the owner or operator of an affected unit, you must keep records of:

(1) Performance tests conducted pursuant to paragraph (e)(2) of this section, including the date, engine settings on the date of the test, and documentation of the methods and results of the testing.

(2) Catalyst monitoring required by paragraph (e)(3) of this section, if applicable, and any actions taken to address monitored values outside the temperature or pressure drop parameters, including the date and a description of actions taken.

(3) Parameters monitored pursuant to the facility's site-specific parametric monitoring plan.

(4) Hours of operation on a daily basis.

(5) Tuning, adjustments, or other combustion process adjustments and the date of the adjustment(s).

(6) For any Facility-Wide Averaging Plan approved by the Administrator under paragraph (d) of this section, daily calculations of total NO_X emissions to demonstrate compliance with the cap during the ozone season. You must use the equation in this paragraph (f)(6) to calculate total NO_X emissions from all affected units covered by the Facility-Wide Averaging Plan, in tons per day on a

30-day rolling average basis, for purposes of determining compliance with the cap during the ozone season. A new 30-day rolling average emissions rate in tpd is calculated for each operating day during the ozone season, using the 30-day rolling average daily operating hours for the preceding 30 operating days.

Equation 2 to Paragraph (f)(6)

$$\sum_{i=1}^{N} (R_{ai} \; x \; DC \; x \; H_{ai}) \leq Cap \; (tons \; per \; day)$$

Where:

H_{ai} = the consecutive 30-day rolling average daily operating hours for the preceding 30 operating days during ozone season (hours).

i = each affected unit.

N = number of affected units.

DC = the engine manufacturer's maximum design capacity in horsepower (hp) at the installation site conditions.

R_{ai} = the actual emissions rate for each affected unit based on the most recent performance test results, (grams/hp-hr).

(g) ***Reporting requirements.***

(1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_X emissions rate that exceeds the applicable emissions limit in paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you are the owner or operator of an affected unit, you must submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in paragraph (g) of this section. The report shall contain the following information:

(i) The name and address of the owner and operator;

(ii) The address of the subject engine;

(iii) Longitude and latitude coordinates of the subject engine;

(iv) Identification of the subject engine;

(v) Statement of compliance with the applicable emissions limit under paragraph (c) of this section or a Facility-Wide Averaging Plan under paragraph (d) of this section;

(vi) Statement of compliance regarding the conduct of maintenance and operations in a manner consistent with good air pollution control practices for minimizing emissions;

(vii) The date and results of the performance test conducted pursuant to paragraph (e) of this section;

(viii) Any records required by paragraph (f) of this section, including records of parametric monitoring data, to demonstrate compliance with the applicable emissions limit under paragraph (c) of this section or a Facility-Wide Averaging Plan under paragraph (d) of this section, if applicable;

(ix) If applicable, a statement documenting any change in the operating characteristics of the subject engine; and

(x) A statement certifying that the information included in the annual report is complete and accurate.

[88 FR 36869, June 5, 2023]

§ 52.42 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Cement and Concrete Product Manufacturing Industry?

(a) ***Definitions.*** All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means a cement kiln meeting the applicability criteria of this section.

Cement kiln means an installation, including any associated pre-heater or pre-calciner devices, that produces clinker by heating limestone and other materials to produce Portland cement.

Cement plant means any facility manufacturing cement by either the wet or dry process.

Clinker means the product of a cement kiln from which finished cement is manufactured by milling and grinding.

Operating day means a 24-hour period beginning at 12:00 midnight during which the kiln produces clinker at any time.

(b) ***Applicability.*** You are subject to the requirements of this section if you own or operate a new or existing cement kiln that emits or has the potential to emit 100 tons per year or more of NO_X on or after August 4, 2023, and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). Any existing cement kiln with a potential to emit of 100 tons per year or more of NO_X on August 4, 2023, will continue to be subject to the requirements of this section even if that unit later becomes subject to a physical or operational limitation that lowers its potential to emit below 100 tons per year of NO_X.

(c) ***Emissions limitations.*** If you are the owner or operator of an affected unit, you must meet the following emissions limitations on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) Long wet kilns: 4.0 lb/ton of clinker;

(2) Long dry kilns: 3.0 lb/ton of clinker;

(3) Preheater kilns: 3.8 lb/ton of clinker;

(4) Precalciner kilns: 2.3 lb/ton of clinker; and

(5) Preheater/Precalciner kilns: 2.8 lb/ton of clinker.

(d) ***Testing and monitoring requirements.***

(1) If you are the owner or operator of an affected unit you must conduct performance tests, on an annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (*https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods*), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. The annual performance test does not have to be performed during the ozone season. You must calculate and record the 30-operating day rolling average emissions rate of NO_X as the total of all hourly emissions data for a cement kiln in the preceding 30 days, divided by the total tons of clinker produced in that kiln during the same 30-operating day period, using equation 1 to this paragraph (d)(1):

Equation 1 to Paragraph (d)(1)

$$E_{30D} = k\left(\frac{\sum_{i=1}^{N} Ci\ Qi}{P}\right)$$

Where:

E_{30D} = 30 kiln operating day average emissions rate of NO_X, in lbs/ton of clinker.

Ci = Concentration of NO_X for hour i, in ppm.

Qi = Volumetric flow rate of effluent gas for hour i, where Ci and Qi are on the same basis (either wet or dry), in scf/hr.

P = 30 days of clinker production during the same Time period as the NO_X emissions measured, in tons.

k = Conversion factor, $1.194 \times^{10-7}$ for NO_X, in lb/scf/ppm.

n = Number of kiln operating hours over 30 kiln operating days.

(2) If you are the owner or operator of an affected unit and are operating a NO_X continuous emissions monitoring system (CEMS) that monitors NO_X emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_X emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_X emissions and either oxygen (O_2) or carbon dioxide (CO_2).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_X emissions rates measured by the CEMS shall be expressed in terms of lbs/ton of clinker and shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits in this section.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_X emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3) If you are the owner or operator of an affected unit not operating NO_X CEMS, you must conduct an initial performance test before the 2026 ozone season to establish appropriate indicator ranges for operating parameters and continuously monitor those operator parameters consistent with the requirements of paragraphs (d)(3)(i) through (v) of this section.

(i) You must monitor and record kiln stack exhaust gas flow rate, hourly clinker production rate or kiln feed rate, and kiln stack exhaust temperature during the initial performance test and subsequent annual performance tests to demonstrate continuous compliance with your NO_X emissions limits.

(ii) You must determine hourly clinker production by one of two methods:

(A) Install, calibrate, maintain, and operate a permanent weigh scale system to record weight rates of the amount of clinker produced in tons of mass per hour. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy; or

(B) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates of the amount of feed to the kiln in tons of mass per hour. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln specific feed-to-clinker ratio based on reconciled clinker production rates determined for accounting purposes and recorded feed rates. This ratio should be updated monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(C) For each kiln operating hour for which you do not have data on clinker production or the amount of feed to the kiln, use the value from the most recent previous hour for which valid data are available.

(D) If you measure clinker production directly, record the daily clinker production rates; if you measure the kiln feed rates and calculate clinker production, record the daily kiln feed and clinker production rates.

(iii) You must use the kiln stack exhaust gas flow rate, hourly kiln production rate or kiln feed rate, and kiln stack exhaust temperature during the initial performance test and subsequent annual performance tests as indicators of NO_X operating parameters to demonstrate continuous compliance and establish site-specific indicator ranges for these operating parameters.

(iv) You must repeat the performance test annually to reassess and adjust the site-specific operating parameter indicator ranges in accordance with the results of the performance test.

(v) You must report and include your ongoing site-specific operating parameter data in the annual reports required under paragraph (e) of this section and semi-annual title V monitoring reports to the relevant permitting authority.

(e) ***Recordkeeping requirements.*** If you are the owner or operator of an affected unit, you shall maintain records of the following information for each day the affected unit operates:

(1) Calendar date;

(2) The average hourly NO_X emissions rates measured or predicted;

(3) The 30-day average NO_X emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_X emissions rates for the preceding 30 operating days;

(4) Identification of the affected unit operating days when the calculated 30-day average NO_X emissions rates are in excess of the applicable site-specific NO_X emissions limit with the reasons for such excess emissions as well as a description of corrective actions taken;

(5) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(6) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(7) If a CEMS is used to verify compliance:

(i) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ii) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60; and

(iii) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F;

(8) Operating parameters required under paragraph (d) of this section to demonstrate compliance during the ozone season;

(9) Each fuel type, usage, and heat content; and

(10) Clinker production rates.

(f) ***Reporting requirements.***

(1) If you are the owner or operator of an affected unit, you shall submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_X emissions rate that exceeds the applicable emissions limit established under paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include records all records required by paragraph (d) of this section, including record of CEMS data or operating parameters required by paragraph (d) to demonstrate continuous compliance the applicable emissions limits under paragraph (c) of this section.

(g) ***Initial notification requirements for existing affected units.***

(1) The requirements of this paragraph (g) apply to the owner or operator of an existing affected unit.

(2) The owner or operator of an existing affected unit that emits or has a potential to emit 100 tons per year or greater as of August 4, 2023, shall notify the Administrator via the CEDRI or analogous electronic submission system provided by the EPA that the unit is subject to this section. The notification, which shall be submitted not later than December 4, 2023, shall be submitted in PDF format to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The notification shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (*i.e.,* physical location) of the affected unit;

(iii) An identification of the relevant standard, or other requirement, that is the basis for the notification and the unit's compliance date; and

(iv) A brief description of the nature, size, design, and method of operation of the facility and an identification of the types of emissions points (units) within the facility subject to the relevant standard.

[88 FR 36869, June 5, 2023]

§ 52.43 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Iron and Steel Mills and Ferroalloy Manufacturing Industry?

(a) ***Definitions.*** All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means any reheat furnace meeting the applicability criteria of this section.

Day means a calendar day unless expressly stated to be a business day. In computing any period of time for recordkeeping and reporting purposes where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

Low NO_X burner means a burner designed to reduce flame turbulence by the mixing of fuel and air and by establishing fuel-rich zones for initial combustion, thereby reducing the formation of NO_X.

Low-NO_X technology means any post-combustion NO_X control technology capable of reducing NO_X emissions by 40% from baseline emission levels as measured during pre-installation testing.

Operating day means a 24-hour period beginning at 12:00 midnight during which any fuel is combusted at any time in the reheat furnace.

Reheat furnace means a furnace used to heat steel product—including metal ingots, billets, slabs, beams, blooms and other similar products—for the purpose of deformation and rolling.

(b) ***Applicability.*** The requirements of this section apply to each new or existing reheat furnace at an iron and steel mill or ferroalloy manufacturing facility that directly emits or has the potential to emit 100 tons per year or more of NO_X on or after August 4, 2023, does not have low-NO_X burners installed, and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). Any existing reheat furnace with a potential to emit of 100 tons per year or more of NO_X on August 4, 2023, will continue to be subject to the requirements of this section even if that unit later becomes subject to a physical or operational limitation that lowers its potential to emit below 100 tons per year of NO_X.

(c) ***Emissions control requirements.*** If you are the owner or operator of an affected unit without low-NO_X burners already installed, you must install and operate low-NO_X burners or equivalent alternative low-NO_X technology designed to achieve at least a 40% reduction from baseline NO_X emissions in accordance with the work plan established pursuant to paragraph (d) of this section. You must meet the emissions limit established under paragraph (d) on a 30-day rolling average basis.

(d) ***Work plan requirements.***

(1) The owner or operator of each affected unit must submit a work plan for each affected unit by August 5, 2024. The work plan must be submitted via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g). Each work plan must include a description of the affected unit and rated production and energy capacities, identification of the low-NO_X burner or alternative low NO_X technology selected, and the phased construction timeframe by which you will design, install, and consistently operate the device. Each work plan shall also include, where applicable, performance test results obtained no more than five years before August 4, 2023, to be used as baseline emissions testing data providing the basis for required emissions reductions. If no such data exist, then the owner or operator must perform pre-installation testing as described in paragraph (e)(3) of this section.

(2) The owner or operator of an affected unit shall design each low-NO_X burner or alternative low-NO_X technology identified in the work plan to achieve NO_X emission reductions by a minimum of 40% from baseline emission levels measured during performance testing that meets the criteria set forth in paragraph (e)(1) of this section, or during pre-installation testing as described in paragraph (e)(3) of this section. Each low-NO_X burner or alternative low-NO_X technology shall be continuously operated during all production periods according to paragraph (c) of this section.

(3) The owner or operator of an affected unit shall establish an emissions limit in the work plan that the affected unit must comply with in accordance with paragraph (c) of this section.

(4) The EPA's action on work plans:

(i) The Administrator will provide via the CEDRI or analogous electronic submission system provided by the EPA notification to the owner or operator of an affected unit if the submitted work plan is complete, that is, whether the request contains sufficient information to make a determination, within 60 calendar days after receipt of the original work plan and within 60 calendar days after receipt of any supplementary information.

(ii) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA, which shall be publicly available, to the owner or operator of a decision to approve or intention to disapprove the work plan within 60 calendar days after providing written notification pursuant to paragraph (d)(4)(i) of this section that the submitted work plan is complete.

(iii) Before disapproving a work plan, the Administrator will notify the owner or operator via the CEDRI or analogous electronic submission system provided by the EPA of the Administrator's intention to issue the disapproval, together with:

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended disapproval, additional information or arguments to the Administrator before further action on the work plan.

(iv) The Administrator's final decision to disapprove a work plan will be via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will set forth the specific grounds on which the disapproval is based. The final decision will be made within 60 calendar days after presentation of additional information or argument (if the submitted work plan is complete), or within 60 calendar days after the deadline for the submission of additional information or argument under paragraph (d)(5)(iii)(B) of this section, if no such submission is made.

(v) If the Administrator disapproves the submitted work plan for failure to satisfy the requirements of paragraphs (c) and (d)(1) through (3) of this section, or if the owner or operator of an affected unit fails to submit a work plan by August 5, 2024, the owner or operator will be in violation of this section. Each day that the affected unit operates following such disapproval or failure to submit shall constitute a violation.

(e) ***Testing and monitoring requirements.***

(1) If you are the owner or operator of an affected unit you must conduct performance tests, on an annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (*https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods*), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. The annual performance test does not have to be performed during the ozone season.

(2) If you are the owner or operator of an affected unit and are operating a NO_X continuous emissions monitoring system (CEMS) that monitors NO_X emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_X emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_X emissions and either oxygen (O_2) or carbon dioxide (CO_2).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_X emissions rates measured by the CEMS shall be expressed in form of the emissions limit established in the work plan and shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits established in the work plan.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_X emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3) If you are the owner or operator of an affected unit not operating NO_X CEMS, you must conduct an initial performance test before the 2026 ozone season to establish appropriate indicator ranges for operating parameters and continuously monitor those operator parameters consistent with the requirements of paragraphs (e)(3)(i) through (iv) of this section.

(i) You must monitor and record stack exhaust gas flow rate and temperature during the initial performance test and subsequent annual performance tests to demonstrate continuous compliance with your NO_X emissions limits.

(ii) You must use the stack exhaust gas flow rate and temperature during the initial performance test and subsequent annual performance tests to establish a site-specific indicator for these operating parameters.

(iii) You must repeat the performance test annually to reassess and adjust the site-specific operating parameter indicator ranges in accordance with the results of the performance test.

(iv) You must report and include your ongoing site-specific operating parameter data in the annual reports required under paragraph (f) of this section and semi-annual title V monitoring reports to the relevant permitting authority.

(f) ***Recordkeeping requirements.*** If you are the owner or operator of an affected unit, you shall maintain records of the following information for each day the affected unit operates:

(1) Calendar date;

(2) The average hourly NO_X emissions rates measured or predicted;

(3) The 30-day average NO_X emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_X emissions rates for the preceding 30 operating days;

(4) Identification of the affected unit operating days when the calculated 30-day average NO_X emissions rates are in excess of the applicable site-specific NO_X emissions limit with the reasons for such excess emissions as well as a description of corrective actions taken;

(5) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(6) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(7) If a CEMS is used to verify compliance:

(i) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ii) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60; and

(iii) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F;

(8) Operating parameters required under paragraph (d) of this section to demonstrate compliance during the ozone season; and

(9) Each fuel type, usage, and heat content.

(g) ***Reporting requirements.***

(1) If you are the owner or operator of an affected unit, you shall submit a final report via the CEDRI or analogous electronic submission system provided by the EPA, by no later than March 30, 2026, certifying that installation of each selected control device has been completed. You shall include in the report the dates of final construction and relevant performance testing, where applicable, demonstrating compliance with the selected emission limits pursuant to paragraphs (c) and (d) of this section.

(2) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(3) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_X emissions rate that exceeds the applicable emissions limit established under paragraphs (c) and (d) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(4) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include records all records required by

paragraphs (e) and (f) of this section, including record of CEMS data or operating parameters required by paragraph (e) to demonstrate compliance the applicable emissions limits established under paragraphs (c) and (d) of this section.

(h) ***Initial notification requirements for existing affected units.***

(1) The requirements of this paragraph (h) apply to the owner or operator of an existing affected unit.

(2) The owner or operator of an existing affected unit that emits or has a potential to emit 100 tons per year or more of NO_X as of August 4, 2023, shall notify the Administrator via the CEDRI or analogous electronic submission system provided by the EPA that the unit is subject to this section. The notification, which shall be submitted not later than December 4, 2023, shall be submitted in PDF format to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The notification shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (*i.e.,* physical location) of the affected unit;

(iii) An identification of the relevant standard, or other requirement, that is the basis for the notification and the unit's compliance date; and

(iv) A brief description of the nature, size, design, and method of operation of the facility and an identification of the types of emissions points (units) within the facility subject to the relevant standard.

[88 FR 36869, June 5, 2023]

§ 52.44 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Glass and Glass Product Manufacturing Industry?

(a) ***Definitions.*** All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected units means a glass manufacturing furnace meeting the applicability criteria of this section.

Borosilicate recipe means glass product composition of the following approximate ranges of weight proportions: 60 to 80 percent silicon dioxide, 4 to 10 percent total R_2O (*e.g.,* Na_2O and K_2O), 5 to 35 percent boric oxides, and 0 to 13 percent other oxides.

Container glass means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottles, jars, ampoules, and other products listed in Standard Industrial Classification (SIC) 3221 (SIC 3221).

Flat glass means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in SIC 3211.

Glass melting furnace means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and

distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

Glass produced means the weight of the glass pulled from the glass melting furnace.

Idling means the operation of a glass melting furnace at less than 25% of the permitted production capacity or fuel use capacity as stated in the operating permit.

Lead recipe means glass product composition of the following ranges of weight proportions: 50 to 60 percent silicon dioxide, 18 to 35 percent lead oxides, 5 to 20 percent total R_2O (*e.g.,* Na_2O and K_2O), 0 to 8 percent total R_2O_3 (*e.g.,* Al_2O_3), 0 to 15 percent total RO (*e.g.,* CaO, MgO), other than lead oxide, and 5 to 10 percent other oxides.

Operating day means a 24-hr period beginning at 12:00 midnight during which the furnace combusts fuel at any time but excludes any period of startup, shutdown, or idling during which the affected unit complies with the requirements in paragraphs (d) through (f) of this section, as applicable.

Pressed and blown glass means glass which is pressed, blown, or both, including textile fiberglass, noncontinuous flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into: Glass of borosilicate recipe, Glass of soda-lime and lead recipes, and Glass of opal, fluoride, and other recipes.

Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials.

Shutdown means the period of time during which a glass melting furnace is taken from an operational to a non-operational status by allowing it to cool down from its operating temperature to a cold or ambient temperature as the fuel supply is turned off.

Soda-lime recipe means glass product composition of the following ranges of weight proportions: 60 to 75 percent silicon dioxide, 10 to 17 percent total R_2O (*e.g.,* Na_2O and K_2O), 8 to 20 percent total RO but not to include any PbO (*e.g.,* CaO, and MgO), 0 to 8 percent total R_2O_3 (*e.g.,* Al_2O_3), and 1 to 5 percent other oxides.

Startup means the period of time, after initial construction or a furnace rebuild, during which a glass melting furnace is heated to operating temperatures by the primary furnace combustion system, and systems and instrumentation are brought to stabilization.

Textile fiberglass means fibrous glass in the form of continuous strands having uniform thickness.

Wool fiberglass means fibrous glass of random texture, including accoustical board and tile (mineral wool), fiberglass insulation, glass wool, insulation (rock wool, fiberglass, slag, and silicia minerals), and mineral wool roofing mats.

(b) ***Applicability.*** You are subject to the requirements under this section if you own or operate a new or existing glass manufacturing furnace that directly emits or has the potential to emit 100 tons per year or more of NO_X on or after August 4, 2023, and is located within any of the States listed in § 52.40(c)(2),

including Indian country located within the borders of any such State(s). Any existing glass manufacturing furnace with a potential to emit of 100 tons per year or more of NO_X on August 4, 2023, will continue to be subject to the requirements of this section even if that unit later becomes subject to a physical or operational limitation that lowers its potential to emit below 100 tons per year of NO_X.

(c) ***Emissions limitations.*** If you are the owner or operator of an affected unit, you must meet the emissions limitations in paragraphs (c)(1) and (2) of this section on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter. For the 2026 ozone season, the emissions limitations in paragraphs (c)(1) and (2) do not apply during shutdown and idling if the affected unit complies with the requirements in paragraphs (e) and (f) of this section, as applicable. For the 2027 and subsequent ozone seasons, the emissions limitations in paragraphs (c)(1) and (2) do not apply during startup, shutdown, and idling, if the affected unit complies with the requirements in paragraphs (d) through (f) of this section, as applicable.

(1) Container glass, pressed/blown glass, or fiberglass manufacturing furnace: 4.0 lb/ton of glass; and

(2) Flat glass manufacturing furnace: 7.0 lb/ton of glass.

(d) ***Startup requirements.***

(1) If you are the owner or operator of an affected unit, you shall submit via the CEDRI or analogous electronic submission system provided by the EPA, no later than 30 days prior to the anticipated date of startup, the following information to assure proper operation of the furnace:

(i) A detailed list of activities to be performed during startup and explanations to support the length of time needed to complete each activity.

(ii) A description of the material process flow rates, system operating parameters, and other information that the owner or operator shall monitor and record during the startup period.

(iii) Identification of the control technologies or strategies to be utilized.

(iv) A description of the physical conditions present during startup periods that prevent the controls from being effective.

(v) A reasonably precise estimate as to when physical conditions will have reached a state that allows for the effective control of emissions.

(2) The length of startup following activation of the primary furnace combustion system may not exceed:

(i) Seventy days for a container, pressed or blown glass furnace;

(ii) Forty days for a fiberglass furnace; and

(iii) One hundred and four days for a flat glass furnace and for all other glass melting furnaces not covered under paragraphs (d)(2)(i) and (ii) of this section.

(3) During the startup period, the owner or operator of an affected unit shall maintain the stoichiometric ratio of the primary furnace combustion system so as not to exceed 5 percent excess oxygen, as calculated from the actual fuel and oxidant flow measurements for combustion in the affected unit.

(4) The owner or operator of an affected unit shall place the emissions control system in operation as soon as technologically feasible during startup to minimize emissions.

(e) ***Shutdown requirements.***

(1) If you are the owner or operator of an affected unit, you shall submit via the CEDRI or analogous electronic submission system provided by the EPA to the Administrator, no later than 30 days prior to the anticipated date of shutdown, the following information to assure proper operation of the furnace:

(i) A detailed list of activities to be performed during shutdown and explanations to support the length of time needed to complete each activity.

(ii) A description of the material process flow rates, system operating parameters, and other information that the owner or operator shall monitor and record during the shutdown period.

(iii) Identification of the control technologies or strategies to be utilized.

(iv) A description of the physical conditions present during shutdown periods that prevent the controls from being effective.

(v) A reasonably precise estimate as to when physical conditions will have reached a state that allows for the effective control of emissions.

(2) The duration of a shutdown, as measured from the time the furnace operations drop below 25% of the permitted production capacity or fuel use capacity to when all emissions from the furnace cease, may not exceed 20 days.

(3) If you are the owner or operator of an affected unit, you shall operate the emissions control system whenever technologically feasible during shutdown to minimize emissions.

(f) ***Idling requirements.***

(1) If you are the owner or operator of an affected unit, you shall operate the emissions control system whenever technologically feasible during idling to minimize emissions.

(2) If you are the owner or operator of an affected unit, your NO_X emissions during idling may not exceed the amount calculated using the following equation: Pounds per day emissions limit of NO_X = (Applicable NO_X emissions limit specified in paragraph (c) of this section expressed in pounds per ton of glass produced) × (Furnace permitted production capacity in tons of glass produced per day).

(3) To demonstrate compliance with the alternative daily NO_X emissions limit identified in paragraph (f)(2) of this section during periods of idling, the owners or operators of an affected unit shall maintain records consistent with paragraph (h)(3) of this section.

(g) ***Testing and monitoring requirements.***

(1) If you own or operate an affected unit subject to the NO_X emissions limits under paragraph (c) of this section you must conduct performance tests, on an annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (*https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods*), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. The annual performance test does not have to be performed during the ozone season. Owners or operators of affected units must calculate and record the 30-day rolling average emissions rate of NO_X as the total of all hourly emissions data for an affected unit in the preceding 30 days, divided by the total tons of glass produced in that affected unit during the same 30-day period. Direct measurement or material balance using good engineering practice

shall be used to determine the amount of glass produced during the performance test. The rate of glass produced is defined as the weight of glass pulled from the affected unit during the performance test divided by the number of hours taken to perform the performance test.

(2) If you are the owner or operator of an affected unit subject to the NO_X emissions limits under paragraph (c)(1) of this section and are operating a NO_X CEMS that monitors NO_X emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_X emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_X emissions and either oxygen (O_2) or carbon dioxide (CO_2).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_X emissions rates measured by the CEMS shall be expressed in terms of lbs/ton of glass and shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits in this section.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_X emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3) If you are the owner or operator of an affected unit not operating NO_X CEMS, you must conduct an initial performance test before the 2026 ozone season to establish appropriate indicator ranges for operating parameters and continuously monitor those operator parameters consistent with the requirements of paragraphs (g)(3)(i) through (iv) of this section.

(i) You must monitor and record stack exhaust gas flow rate, hourly glass production, and stack exhaust gas temperature during the initial performance test and subsequent annual performance tests to demonstrate continuous compliance with your NO_X emissions limits.

(ii) You must use the stack exhaust gas flow rate, hourly glass production, and stack exhaust gas temperature during the initial performance test and subsequent annual performance tests as NO_X CEMS indicators to demonstrate continuous compliance and establish a site-specific indicator ranges for these operating parameters.

(iii) You must repeat the performance test annually to reassess and adjust the site-specific operating parameter indicator ranges in accordance with the results of the performance test.

(iv) You must report and include your ongoing site-specific operating parameter data in the annual reports required under paragraph (h) of this section and semi-annual title V monitoring reports to the relevant permitting authority.

(4) If you are the owner or operator of an affected unit seeking to comply with the requirements for startup under paragraph (d) of this section or shutdown under paragraph (e) of this section in lieu of the applicable emissions limit under paragraph (c) of this section, you must monitor material process flow rates, fuel throughput, oxidant flow rate, and the selected system operating parameters in accordance with paragraphs (d)(1)(ii) and (e)(1)(ii) of this section.

(h) ***Recordkeeping requirements.***

(1) If you are the owner or operator of an affected unit, you shall maintain records of the following information for each day the affected unit operates:

(i) Calendar date;

(ii) The average hourly NO_X emissions rates measured or predicted;

(iii) The 30-day average NO_X emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_X emissions rates for the preceding 30 operating days;

(iv) Identification of the affected unit operating days when the calculated 30-day average NO_X emissions rates are in excess of the applicable site-specific NO_X emissions limit with the reasons for such excess emissions as well as a description of corrective actions taken;

(v) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(vi) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(vii) If a CEMS is used to verify compliance:

(A) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(B) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60; and

(C) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F;

(D) Operating parameters required under paragraph (g) to demonstrate compliance during the ozone season;

(viii) Each fuel type, usage, and heat content; and

(ix) Glass production rate.

(2) If you are the owner or operator of an affected unit, you shall maintain all records necessary to demonstrate compliance with the startup and shutdown requirements in paragraphs (d) and (e) of this section, including but not limited to records of material process flow rates, system operating parameters, the duration of each startup and shutdown period, fuel throughput, oxidant flow rate, and any additional records necessary to determine whether the stoichiometric ratio of the primary furnace combustion system exceeded 5 percent excess oxygen during startup.

(3) If you are the owner or operator of an affected unit, you shall maintain records of daily NO_X emissions in pounds per day for purposes of determining compliance with the applicable emissions limit for idling periods under paragraph (f)(2) of this section. Each owner or operator shall also record the duration of each idling period.

(i) ***Reporting requirements.***

(1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_X emissions rate that exceeds the applicable emissions limit in paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you own or operate an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include records all records required by paragraph (g) of this section, including record of CEMS data or operating parameters to demonstrate continuous compliance the applicable emissions limits under paragraphs (c) of this section.

(j) ***Initial notification requirements for existing affected units.***

(1) The requirements of this paragraph (j) apply to the owner or operator of an existing affected unit.

(2) The owner or operator of an existing affected unit that emits or has a potential to emit greater than 100 tons per year or greater as of August 4, 2023, shall notify the Administrator via the CEDRI or analogous electronic submission system provided by the EPA that the unit is subject to this section. The notification, which shall be submitted not later than December 4, 2023, shall be submitted in PDF format to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The notification shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (*i.e.,* physical location) of the affected unit;

(iii) An identification of the relevant standard, or other requirement, that is the basis for the notification and the unit's compliance date; and

(iv) A brief description of the nature, size, design, and method of operation of the facility and an identification of the types of emissions points (units) within the facility subject to the relevant standard.

[88 FR 36869, June 5, 2023, as amended at 88 FR 49303, July 31, 2023]

§ 52.45 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, the Pulp, Paper, and Paperboard Mills Industries, Metal Ore Mining, and the Iron and Steel and Ferroalloy Manufacturing Industries?

(a) ***Definitions.*** All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means an industrial boiler meeting the applicability criteria of this section.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or oxidizer feed rates are controlled.

Coal means "coal" as defined in 40 CFR 60.41b.

Distillate oil means "distillate oil" as defined in 40 CFR 60.41b.

Maximum heat input capacity means means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the steam generating unit.

Natural gas means "natural gas" as defined in 40 CFR 60.41.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Residual oil means "residual oil" as defined in 40 CFR 60.41c.

(b) ***Applicability.***

(1) The requirements of this section apply to each new or existing boiler with a design capacity of 100 mmBtu/hr or greater that receives 90% or more of its heat input from coal, residual oil, distillate oil, natural gas, or combinations of these fuels in the previous ozone season, is located at sources that are within the Basic Chemical Manufacturing industry, the Petroleum and Coal Products Manufacturing industry, the Pulp, Paper, and Paperboard industry, the Metal Ore Mining industry, and the Iron and Steel and Ferroalloys Manufacturing industry and which is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). The requirements of this section do not apply to an emissions unit that meets the requirements for a low-use exemption as provided in paragraph (b)(2) of this section.

(2) If you are the owner or operator of a boiler meeting the applicability criteria of paragraph (b)(1) of this section that operates less than 10% per year on an hourly basis, based on the three most recent years of use and no more than 20% in any one of the three years, you are exempt from meeting the emissions limits of this section and are only subject to the recordkeeping and reporting requirements of paragraph (f)(2) of this section.

(i) If you are the owner or operator of an affected unit that exceeds the 10% per year hour of operation over three years or the 20% hours of operation per year criteria, you can no longer comply via the low-use exemption provisions and must meet the applicable emissions limits and other applicable provisions as soon as possible but not later than one year from the date eligibility as a low-use boiler was negated by exceedance of the low-use boiler criteria.

(ii) [Reserved]

(c) ***Emissions limitations.*** If you are the owner or operator of an affected unit, you must meet the following emissions limitations on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) Coal-fired industrial boilers: 0.20 lbs NO_X/mmBtu;

(2) Residual oil-fired industrial boilers: 0.20 lbs NO_X/mmBtu;

(3) Distillate oil-fired industrial boilers: 0.12 lbs NO_X/mmBtu;

(4) Natural gas-fired industrial boilers: 0.08 lbs NO_X/mmBtu; and

(5) Boilers using combinations of fuels listed in paragraphs (c)(1) through (4) of this section: such units shall comply with a NO_X emissions limit derived by summing the products of each fuel's heat input and respective emissions limit and dividing by the sum of the heat input contributed by each fuel.

(d) ***Testing and monitoring requirements.***

(1) If you are the owner or operator of an affected unit, you shall conduct an initial compliance test as described in 40 CFR 60.8 using the continuous system for monitoring NO_X specified by EPA Test Method 7E of 40 CFR part 60, appendix A-4, to determine compliance with the emissions limits for NO_X identified in paragraph (c) of this section. In lieu of the timing of the compliance test described in 40 CFR 60.8(a), you shall conduct the test within 90 days from the installation of the pollution control equipment used to comply with the NO_X emissions limits in paragraph (c) of this section and no later than May 1, 2026.

(i) For the initial compliance test, you shall monitor NO_X emissions from the affected unit for 30 successive operating days and the 30-day average emissions rate will be used to determine compliance with the NO_X emissions limits in paragraph (c) of this section. You shall calculate the 30-day average emission rate as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(ii) You are not required to conduct an initial compliance test if the affected unit is subject to a pre-existing, federally enforceable requirement to monitor its NO_X emissions using a CEMS in accordance with 40 CFR 60.13 or 40 CFR part 75.

(2) If you are the owner or operator of an affected unit with a heat input capacity of 250 mmBTU/hr or greater, you are subject to the following monitoring requirements:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_X emissions and either oxygen (O_2) or carbon dioxide (CO_2), unless the Administrator has approved a request from you to use an alternative monitoring technique under paragraph (d)(2)(vii) of this section. If you have previously installed a NO_X emissions rate CEMS to meet the requirements of 40 CFR 60.13 or 40 CFR part 75 and continue to meet the ongoing requirements of 40 CFR 60.13 or 40 CFR part 75, that CEMS may be used to meet the monitoring requirements of this section.

(ii) You shall operate the CEMS and record data during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. You shall record data during calibration checks and zero and span adjustments.

(iii) You shall express the 1-hour average NO_X emissions rates measured by the CEMS in terms of lbs/mmBtu heat input and shall be used to calculate the average emissions rates under paragraph (c) of this section.

(iv) Following the date on which the initial compliance test is completed, you shall determine compliance with the applicable NO_X emissions limit in paragraph (c) of this section during the ozone season on a continuous basis using a 30-day rolling average emissions rate unless you monitor emissions by means of an alternative monitoring procedure approved pursuant to paragraph (d)(2)(vii) of this section. You shall calculate a new 30-day rolling average emissions rate for each operating day as the average of all the hourly NO_X emissions data for the preceding 30 operating days.

(v) You shall follow the procedures under 40 CFR 60.13 for installation, evaluation, and operation of the continuous monitoring systems. Additionally, you shall use a span value of 1000 ppm NO_X for affected units combusting coal and span value of 500 ppm NO_X for units combusting oil or gas. As an alternative to meeting these span values, you may elect to use the NO_X span values determined according to section 2.1.2 in appendix A to 40 CFR part 75.

(vi) When you are unable to obtain NO_X emissions data because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, you will obtain emissions data by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(vii) You may delay installing a CEMS for NO_X until after the initial performance test has been conducted. If you demonstrate during the performance test that emissions of NO_X are less than 70 percent of the applicable emissions limit in paragraph (c) of this section, you are not required to install a CEMS for measuring NO_X. If you demonstrate your affected unit emits less than 70 percent of the applicable emissions limit chooses to not install a CEMS, you must submit a written request to the Administrator that documents the results of the initial performance test and includes an alternative monitoring procedure that will be used to track compliance with the applicable NO_X emissions limit(s) in paragraph (c) of this section. The Administrator may consider the request and, following public notice and comment, may approve the alternative monitoring procedure with or without revision, or disapprove the request. Upon receipt of a disapproved request, you will have one year to install a CEMS.

(3) If you are the owner or operator of an affected unit with a heat input capacity less than 250 mmBTU/hr, you must monitor NO_X emission via the requirements of paragraph (e)(1) of this section or you must monitor NO_X emissions by conducting an annual test in conjunction with the implementation of a monitoring plan meeting the following requirements:

(i) You must conduct an initial performance test over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the NO_X emission standards under paragraph (c) of this section using Method 7, 7A, or 7E of appendix A-4 to 40 CFR part 60, Method 320 of appendix A to 40 CFR part 63, or other approved reference methods.

(ii) You must conduct annual performance tests once per calendar year to demonstrate compliance with the NO_X emission standards under paragraph (c) of this section over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input

capacity using Method 7, 7A, or 7E of appendix A-4 to 40 CFR part 60, Method 320 of appendix A to 40 CFR part 63, or other approved reference methods. The annual performance test must be conducted before the affected units operates more than 400 hours in a given year.

(iii) You must develop and comply with a monitoring plan that relates the operational parameters to emissions of the affected unit. The owner or operator of each affected unit shall develop a monitoring plan that identifies the operating conditions of the affected unit to be monitored and the records to be maintained in order to reliably predict NO_X emissions and determine compliance with the applicable emissions limits of this section on a continuous basis. You shall include the following information in the plan:

(A) You shall identify the specific operating parameters to be monitored and the relationship between these operating parameters and the applicable NO_X emission rates. Operating parameters of the affected unit include, but are not limited to, the degree of staged combustion (*i.e.,* the ratio of primary air to secondary and/or tertiary air) and the level of excess air (*i.e.,* flue gas O_2 level).

(B) You shall include the data and information used to identify the relationship between NO_X emission rates and these operating conditions.

(C) ***You shall identify:*** how these operating parameters, including steam generating unit load, will be monitored on an hourly basis during periods of operation of the affected unit; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating parameters will be representative and accurate; and the type and format of the records of these operating parameters, including steam generating unit load, that you will maintain.

(4) You shall submit the monitoring plan to the EPA via the CEDRI reporting system, and request that the relevant permitting agency incorporate the monitoring plan into the facility's title V permit.

(e) ***Recordkeeping requirements.***

(1) If you are the owner or operator of an affected unit, which is not a low-use boiler, you shall maintain records of the following information for each day the affected unit operates during the ozone season:

(i) Calendar date;

(ii) The average hourly NO_X emissions rates (expressed as lbs NO_2/mmBtu heat input) measured or predicted;

(iii) The 30-day average NO_X emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_X emissions rates for the preceding 30 steam generating unit operating days;

(iv) Identification of the affected unit operating days when the calculated 30-day rolling average NO_X emissions rates are in excess of the applicable NO_X emissions limit in paragraph (c) of this section with the reasons for such excess emissions as well as a description of corrective actions taken;

(v) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(vi) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(vii) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;

(viii) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ix) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60;

(x) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F; and

(xi) The type and amounts of each fuel combusted.

(2) If you are the owner or operator of an affected unit complying as a low-use boiler, you must maintain the following records consistent with the requirements of § 52.40(g):

(i) Identification and location of the boiler;

(ii) Nameplate capacity;

(iii) The fuel or fuels used by the boiler;

(iv) For each operating day, the type and amount of fuel combusted, and the date and total number of hours of operation; and

(v) the annual hours of operation for each of the prior 3 years, and the 3-year average hours or operation.

(f) ***Reporting requirements.***

(1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_X emissions rate, as determined under paragraph (e)(1)(iii) of this section, that exceeds the applicable emissions limit in paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you are the owner or operator an affected unit subject to the continuous monitoring requirements for NO_X under paragraph (d) of this section, you shall submit reports containing the information recorded under paragraph (d) of this section as described in paragraph (e)(1) of this section. You shall submit compliance reports for continuous monitoring in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(4) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g).

[88 FR 36869, June 5, 2023]

§ 52.46 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from Municipal Waste Combustors?

(a) ***Definitions.*** All terms not defined in this paragraph (a) shall have the meaning given them in the Act and in subpart A of 40 CFR part 60.

Affected unit means a municipal waste combustor meeting the applicability criteria of this section.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustor and who is responsible for daily onsite supervision, technical direction, management, and overall performance of the facility.

Mass burn refractory municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes combustors with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace or on a tumbling-tile grate.

Mass burn waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a waterwall furnace.

Municipal waste combustor, MWC, or *municipal waste combustor unit* means:

(i) Means any setting or equipment that combusts solid, liquid, or gasified MSW including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (*i.e.,* steam-generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at plastics/rubber recycling units. Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a MWC are defined as follows. The MWC unit includes, but is not limited to, the MSW fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The MWC boundary starts at the MSW pit or hopper and extends through:

(A) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

(B) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(C) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(iii) The MWC unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine generator set.

Municipal waste combustor unit capacity means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under paragraph (e)(4) of this section.

Shift supervisor means the person who is in direct charge and control of the operation of a municipal waste combustor and who is responsible for onsite supervision, technical direction, management, and overall performance of the facility during an assigned shift.

(b) ***Applicability.*** The requirements of this section apply to each new or existing municipal waste combustor unit with a combustion capacity greater than 250 tons per day (225 megagrams per day) of municipal solid waste and which is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s).

(c) ***Emissions limitations.*** If you are the owner or operator of an affected unit, you must meet the following emissions limitations at all times, except during startup and shutdown, on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) 110 ppmvd at 7 percent oxygen on a 24-hour block averaging period; and

(2) 105 ppmvd at 7 percent oxygen on a 30-day rolling averaging period.

(d) ***Startup and shutdown requirements.*** If you are the owner or operator of an affected unit, you must comply with the following requirements during startup and shutdown:

(1) During periods of startup and shutdown, you shall meet the following emissions limits at stack oxygen content:

(i) 110 ppmvd at stack oxygen content on a 24-hour block averaging period; and

(ii) 105 ppmvd at stack oxygen content on a 30-day rolling averaging period.

(2) Duration of startup and shutdown, periods are limited to 3 hours per occurrence.

(3) The startup period commences when the affected unit begins the continuous burning of municipal solid waste and does not include any warmup period when the affected unit is combusting fossil fuel or other nonmunicipal solid waste fuel, and no municipal solid waste is being fed to the combustor.

(4) Continuous burning is the continuous, semicontinuous, or batch feeding of municipal solid waste for purposes of waste disposal, energy production, or providing heat to the combustion system in preparation for waste disposal or energy production. The use of municipal solid waste solely to provide thermal protection of the grate or hearth during the startup period when municipal solid waste is not being fed to the grate is not considered to be continuous burning.

(5) The owner and operator of an affected unit shall minimize NO_X emissions by operating and optimizing the use of all installed pollution control technology and combustion controls consistent with the technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 CFR 60.11(d)) for such equipment and the unit at all times the unit is in operation.

(e) *Testing and monitoring requirements.*

(1) If you are the owner or operator of an affected unit, you shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring the oxygen or carbon dioxide content of the flue gas at each location where NO_X are monitored and record the output of the system. You shall comply with the following test procedures and test methods:

(i) You shall use a span value of 25 percent oxygen for the oxygen monitor or 20 percent carbon dioxide for the carbon dioxide monitor;

(ii) You shall install, evaluate, and operate the CEMS in accordance with 40 CFR 60.13;

(iii) You shall complete the initial performance evaluation no later than 180 days after the date of initial startup of the affected unit, as specified under 40 CFR 60.8;

(iv) You shall operate the monitor in conformance with Performance Specification 3 in 40 CFR part 60, appendix B, except for section 2.3 (relative accuracy requirement);

(v) You shall operate the monitor in accordance with the quality assurance procedures of 40 CFR part 60, appendix F, except for section 5.1.1 (relative accuracy test audit); and

(vi) If you select carbon dioxide for use in diluent corrections, you shall establish the relationship between oxygen and carbon dioxide levels during the initial performance test according to the following procedures and methods:

(A) This relationship may be reestablished during performance compliance tests; and

(B) You shall submit the relationship between carbon dioxide and oxygen concentrations to the EPA as part of the initial performance test report and as part of the annual test report if the relationship is reestablished during the annual performance test.

(2) If you are the owner or operator of an affected unit, you shall use the following procedures and test methods to determine compliance with the NO_X emission limits in paragraph (c) of this section:

(i) If you are not already operating a CEMS in accordance with 40 CFR 60.13, you shall conduct an initial performance test for nitrogen oxides consistent with 40 CFR 60.8.

(ii) You shall install and operate the NO_X CEMS according to Performance Specification 2 in 40 CFR part 60, appendix B, and shall follow the requirements of 40 CFR 60.58b(h)(10).

(iii) Quarterly accuracy determinations and daily calibration drift tests for the CEMS shall be performed in accordance with Procedure 1 in 40 CFR part 60, appendix F.

(iv) When NO_X continuous emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the EPA or EPA Reference Method 19 in 40 CFR part 60, appendix A-7, to provide, as necessary, valid emissions data for a minimum of 90 percent of the hours per calendar quarter and 95 percent of the hours per calendar year the unit is operated and combusting municipal solid waste.

(v) You shall use EPA Reference Method 19, section 4.1, in 40 CFR part 60, appendix A-7, for determining the daily arithmetic average NO_X emissions concentration.

(A) You may request that compliance with the NO_X emissions limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected unit shall be established as specified in paragraph (e)(1)(vi) of this section.

(B) [Reserved]

(vi) At a minimum, you shall obtain valid CEMS hourly averages for 90 percent of the operating hours per calendar quarter and for 95 percent of the operating hours per calendar year that the affected unit is combusting municipal solid waste:

(A) At least 2 data points per hour shall be used to calculate each 1-hour arithmetic average.

(B) Each NO_X 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emissions monitoring system data.

(vii) The 1-hour arithmetic averages section shall be expressed in parts per million by volume (dry basis) and used to calculate the 24-hour daily arithmetic average concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under 40 CFR 60.13(e)(2).

(viii) All valid CEMS data must be used in calculating emissions averages even if the minimum CEMS data requirements of paragraph (e)(2)(iv) of this section are not met.

(ix) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the CEMS. The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor unit.

(3) If you are the owner or operator of an affected unit, you must determine compliance with the startup and shutdown requirements of paragraph (d) of this section by following the requirements in paragraphs (e)(3)(i) and (ii) of this section:

(i) You can measure CEMS data at stack oxygen content. You can dismiss or exclude CEMS data from compliance calculations, but you shall record and report CEMS data in accordance with the provisions of 40 CFR 60.59b(d)(7).

(ii) You shall determine compliance with the NO_X mass loading emissions limitation for periods of startup and shutdown by calculating the 24-hour average of all hourly average NO_X emissions concentrations from continuous emissions monitoring systems.

(A) You shall perform this calculations using stack flow rates derived from flow monitors, for all the hours during the 3-hour startup or shutdown period and the remaining 21 hours of the 24-hour period.

(B) [Reserved]

(4) If you are the owner or operator of an affected unit, you shall calculate municipal waste combustor unit capacity using the following procedures:

(i) For municipal waste combustor units capable of combusting municipal solid waste continuously for a 24-hour period, municipal waste combustor unit capacity shall be calculated based on 24 hours of operation at the maximum charging rate. The maximum charging rate shall be determined as specified in paragraphs (e)(4)(i)(A) and (B) of this section as applicable.

(A) For combustors that are designed based on heat capacity, the maximum charging rate shall be calculated based on the maximum design heat input capacity of the unit and a heating value of 12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel.

(B) For combustors that are not designed based on heat capacity, the maximum charging rate shall be the maximum design charging rate.

(ii) For batch feed municipal waste combustor units, municipal waste combustor unit capacity shall be calculated as the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that could be processed in a 24-hour period. The maximum number of batches that could be processed in a 24-hour period is calculated as 24 hours divided by the design number of hours required to process one batch of municipal solid waste, and may include fractional batches (*e.g.,* if one batch requires 16 hours, then 24/16, or 1.5 batches, could be combusted in a 24-hour period). For batch combustors that are designed based on heat capacity, the design heating value of 12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel shall be used in calculating the municipal waste combustor unit capacity in megagrams per day of municipal solid waste.

(f) ***Recordkeeping requirements.*** If you are the owner or operator of an affected unit, you shall maintain records of the following information, as applicable, for each affected unit consistent with the requirements of § 52.40(g).

(1) The calendar date of each record.

(2) The emissions concentrations and parameters measured using continuous monitoring systems.

(i) All 1-hour average NO_X emissions concentrations.

(ii) The average concentrations and percent reductions, as applicable, including all 24-hour daily arithmetic average NO_X emissions concentrations.

(3) Identification of the calendar dates and times (hours) for which valid hourly NO_X emissions, including reasons for not obtaining the data and a description of corrective actions taken.

(4) Identification of each occurrence that NO_X emissions data, or operational data (*i.e.,* unit load) have been excluded from the calculation of average emissions concentrations or parameters, and the reasons for excluding the data.

(5) The results of daily drift tests and quarterly accuracy determinations for CEMS, as required under 40 CFR part 60, appendix F, Procedure 1.

(6) The following records:

(i) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by 40 CFR 60.54b(a) including the dates of initial and renewal certifications and documentation of current certification;

(ii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by 40 CFR 60.54b(b) including the dates of initial and renewal certifications and documentation of current certification;

(iii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustor operator training course or a State-approved equivalent course as required by 40 CFR 60.54b(d) including documentation of training completion; and

(iv) Records of when a certified operator is temporarily off site. Include two main items:

(A) If the certified chief facility operator and certified shift supervisor are off site for more than 12 hours, but for 2 weeks or less, and no other certified operator is on site, record the dates that the certified chief facility operator and certified shift supervisor were off site.

(B) When all certified chief facility operators and certified shift supervisors are off site for more than 2 weeks and no other certified operator is on site, keep records of four items:

(*1*) Time of day that all certified persons are off site.

(*2*) The conditions that cause those people to be off site.

(*3*) The corrective actions taken by the owner or operator of the affected unit to ensure a certified chief facility operator or certified shift supervisor is on site as soon as practicable.

(*4*) Copies of the reports submitted every 4 weeks that summarize the actions taken by the owner or operator of the affected unit to ensure that a certified chief facility operator or certified shift supervisor will be on site as soon as practicable.

(7) Records showing the names of persons who have completed a review of the operating manual as required by 40 CFR 60.54b(f) including the date of the initial review and subsequent annual reviews.

(8) Records of steps taken to minimize emissions during startup and shutdown as required by paragraph (d)(5) of this section.

(g) ***Reporting requirements.***

(1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include all information required by paragraph (e) of this section, including CEMS data to demonstrate compliance with the applicable emissions limits under paragraph (c) of this section.

[88 FR 36869, June 5, 2023]