

measures that provides at least the following amount of emission reductions in time to bring serious ozone non-attainment areas into attainment by their 1999 attainment date:

(1) Reductions at least equal to the difference between:

(i) The nitrogen oxides (NO<sub>x</sub>) emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures throughout all portions of the State that are within the Northeast Ozone Transport Region created under section 184(a) of the Clean Air Act as of December 19, 1994; and

(ii) A reduction in NO<sub>x</sub> emissions from the 1990 statewide inventory in such portions of the State of 50% or whatever greater reduction is necessary to prevent significant contribution to nonattainment in, or interference with maintenance by, any downwind State.

(2) Reductions at least equal to the difference between:

(i) The VOC emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures in all portions of the State in, or near and upwind of, any of the serious or severe ozone nonattainment areas lying in the series of such areas running northeast from the Washington, DC, ozone nonattainment area to and including the Portsmouth, New Hampshire ozone nonattainment area; and

(ii) A reduction in VOC emissions from the 1990 emissions inventory in all such areas of 50% or whatever greater reduction is necessary to prevent significant contribution to nonattainment in, or interference with maintenance by, any downwind State.

[60 FR 4736, Jan. 24, 1995]

**§51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.**

(a)(1) The Administrator finds that the State implementation plan (SIP) for each jurisdiction listed in paragraph (c) of this section is substan-

tially inadequate to comply with the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA), 42 U.S.C. 7410(a)(2)(D)(i)(I), because the SIP does not include adequate provisions to prohibit sources and other activities from emitting nitrogen oxides ("NO<sub>x</sub>") in amounts that will contribute significantly to nonattainment in one or more other States with respect to the 1-hour ozone national ambient air quality standards (NAAQS). Each of the jurisdictions listed in paragraph (c) of this section must submit to EPA a SIP revision that cures the inadequacy.

(2) Under section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each jurisdiction listed in paragraph (c) of this section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I), 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting NO<sub>x</sub> in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the 8-hour ozone NAAQS.

(3)(i) For purposes of this section, the term "Phase I SIP Submission" means those SIP revisions submitted by States on or before October 30, 2000 in compliance with paragraph (b)(1)(ii) of this section. A State's Phase I SIP submission may include portions of the NO<sub>x</sub> budget, under paragraph (e)(3) of this section, that a State is required to include in a Phase II SIP submission.

(ii) For purposes of this section, the term "Phase II SIP Submission" means those SIP revisions that must be submitted by a State in compliance with paragraph (b)(1)(ii) of this section and which includes portions of the NO<sub>x</sub> budget under paragraph (e)(3) of this section.

(b)(1) For each jurisdiction listed in paragraph (c) of this section, the SIP revision required under paragraph (a) of this section will contain adequate provisions, for purposes of complying with section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), only if the SIP revision:

(i) Contains control measures adequate to prohibit emissions of NO<sub>x</sub> that

## Environmental Protection Agency

## § 51.121

would otherwise be projected, in accordance with paragraph (g) of this section, to cause the jurisdiction's overall NO<sub>x</sub> emissions to be in excess of the budget for that jurisdiction described in paragraph (e) of this section (except as provided in paragraph (b)(2) of this section),

(ii) Requires full implementation of all such control measures by no later than May 31, 2004 for the sources covered by a Phase I SIP submission and May 1, 2007 for the sources covered by a Phase II SIP submission.

(iii) Meets the other requirements of this section. The SIP revision's compliance with the requirement of paragraph (b)(1)(i) of this section shall be considered compliance with the jurisdiction's budget for purposes of this section.

(2) The requirements of paragraph (b)(1)(i) of this section shall be deemed satisfied, for the portion of the budget covered by an interstate trading program, if the SIP revision:

(i) Contains provisions for an interstate trading program that EPA determines will, in conjunction with interstate trading programs for one or more other jurisdictions, prohibit NO<sub>x</sub> emissions in excess of the sum of the portion of the budgets covered by the trading programs for those jurisdictions; and

(ii) Conforms to the following criteria:

(A) Emissions reductions used to demonstrate compliance with the revision must occur during the ozone season.

(B) Emissions reductions occurring prior to the first year in which any sources covered by Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section may be used by a source to demonstrate compliance with the SIP revision for the first and second ozone seasons in which any sources covered by a Phase I or Phase II SIP submission are subject to such control measures, provided the SIPs provisions regarding such use comply with the requirements of paragraph (e)(4) of this section.

(C) Emissions reductions credits or emissions allowances held by a source or other person following the first

ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section or any ozone season thereafter that are not required to demonstrate compliance with the SIP for the relevant ozone season may be banked and used to demonstrate compliance with the SIP in a subsequent ozone season.

(D) Early reductions created according to the provisions in paragraph (b)(2)(ii)(B) of this section and used in the first ozone season in which any sources covered by Phase I or Phase II submissions are subject to the control measures under paragraph (b)(1)(i) of this section are not subject to the flow control provisions set forth in paragraph (b)(2)(ii)(E) of this section.

(E) Starting with the second ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section, the SIP shall include provisions to limit the use of banked emissions reductions credits or emissions allowances beyond a predetermined amount as calculated by one of the following approaches:

(1) Following the determination of compliance after each ozone season, if the total number of emissions reduction credits or banked allowances held by sources or other persons subject to the trading program exceeds 10 percent of the sum of the allowable ozone season NO<sub>x</sub> emissions for all sources subject to the trading program, then all banked allowances used for compliance for the following ozone season shall be subject to the following:

(i) A ratio will be established according to the following formula:  $(0.10) \times (\text{the sum of the allowable ozone season NO}_x \text{ emissions for all sources subject to the trading program}) \div (\text{the total number of banked emissions reduction credits or emissions allowances held by all sources or other persons subject to the trading program})$ .

(ii) The ratio, determined using the formula specified in paragraph (b)(2)(ii)(E)(1)(i) of this section, will be multiplied by the number of banked emissions reduction credits or emissions allowances held in each account

§51.121

40 CFR Ch. I (7-1-10 Edition)

at the time of compliance determination. The resulting product is the number of banked emissions reduction credits or emissions allowances in the account which can be used in the current year's ozone season at a rate of 1 credit or allowance for every 1 ton of emissions. The SIP shall specify that banked emissions reduction credits or emissions allowances in excess of the resulting product either may not be used for compliance, or may only be used for compliance at a rate no less than 2 credits or allowances for every 1 ton of emissions.

(2) At the time of compliance determination for each ozone season, if the total number of banked emissions reduction credits or emissions allowances held by a source subject to the trading program exceeds 10 percent of the source's allowable ozone season NO<sub>x</sub> emissions, all banked emissions reduction credits or emissions allowances used for compliance in such ozone season by the source shall be subject to the following:

(i) The source may use an amount of banked emissions reduction credits or emissions allowances not greater than 10 percent of the source's allowable ozone season NO<sub>x</sub> emissions for compliance at a rate of 1 credit or allowance for every 1 ton of emissions.

(ii) The SIP shall specify that banked emissions reduction credits or emissions allowances in excess of 10 percent of the source's allowable ozone season NO<sub>x</sub> emissions may not be used for compliance, or may only be used for compliance at a rate no less than 2 credits or allowances for every 1 ton of emissions.

(c) The following jurisdictions (hereinafter referred to as "States") are subject to the requirement of this section:

(1) With respect to the 1-hour ozone NAAQS: Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

(2) With respect to the 1-hour ozone NAAQS, the portions of Missouri, Michigan, and Alabama within the fine grid of the OTAG modeling domain.

The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner, 69.5 degrees West longitude and 44 degrees North latitude.

(d)(1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than October 30, 2000 for Phase I SIP submissions and no later than April 1, 2005 for Phase II SIP submissions.

(2) The State makes an official submission of its SIP revision to EPA only when:

(i) The submission conforms to the requirements of appendix V to this part; and

(ii) The State delivers five copies of the plan to the appropriate Regional Office, with a letter giving notice of such action.

(e)(1) Except as provided in paragraph (e)(2)(ii) of this section, the NO<sub>x</sub> budget for a State listed in paragraph (c) of this section is defined as the total amount of NO<sub>x</sub> emissions from all sources in that State, as indicated in paragraph (e)(2)(i) of this section with respect to that State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

(2)(i) The State-by-State amounts of the NO<sub>x</sub> budget, expressed in tons, are as follows:

State	Final budget
Alabama .....	119,827
Connecticut .....	42,850
Delaware .....	22,862
District of Columbia .....	6,657
Illinois .....	271,091
Indiana .....	230,381
Kentucky .....	162,519
Maryland .....	81,947
Massachusetts .....	84,848
Michigan .....	190,908
Missouri .....	61,406
New Jersey .....	96,876
New York .....	240,322
North Carolina .....	165,306
Ohio .....	249,541
Pennsylvania .....	257,928
Rhode Island .....	9,378
South Carolina .....	123,496
Tennessee .....	198,286
Virginia .....	180,521
West Virginia .....	83,921
Total .....	\$3,031,527

**Environmental Protection Agency**

**§ 51.121**

(ii) (A) For purposes of paragraph (e)(2)(i) of this section, in the case of each State listed in paragraphs (e)(2)(ii)(B) through (E) of this section, the NO<sub>x</sub> budget is defined as the total amount of NO<sub>x</sub> emissions from all sources in the specified counties in that State, as indicated in paragraph (e)(2)(i) of this section with respect to the State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

(B) In the case of Alabama, the counties are: Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, De Kalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston.

(C) [Reserved]

(D) In the case of Michigan, the counties are: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ottawa, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, and Wayne.

(E) In the case of Missouri, the counties are: Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Genevieve, St. Francois, St. Louis, St. Louis City, Scott, Shannon, Stoddard, Warren, Washington, and Wayne.

(3) The State-by-State amounts of the portion of the NO<sub>x</sub> budget provided in paragraph (e)(1) of this section, expressed in tons, that the States may include in a Phase II SIP submission are as follows:

State	Phase II incremental budget
Alabama .....	4,968
Connecticut .....	41
Delaware .....	660
District of Columbia .....	1
Illinois .....	7,055
Indiana .....	4,244
Kentucky .....	2,556
Maryland .....	780
Massachusetts .....	1,023
Michigan .....	1,033
New Jersey .....	-994
New York .....	1,659
North Carolina .....	6,026
Ohio .....	2,741
Pennsylvania .....	10,230
Rhode Island .....	192
South Carolina .....	4,260
Tennessee .....	2,877
Virginia .....	6,168
West Virginia .....	1,124
<b>Total .....</b>	<b>56,644</b>

(4)(i) Notwithstanding the State's obligation to comply with the budgets set forth in paragraph (e)(2) of this section, a SIP revision may allow sources required by the revision to implement NO<sub>x</sub> emission control measures to demonstrate compliance in the first and second ozone seasons in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section using credit issued from the State's compliance supplement pool, as set forth in paragraph (e)(4)(iii) of this section.

(ii) A source may not use credit from the compliance supplement pool to demonstrate compliance after the second ozone season in which any sources are covered by a Phase I or Phase II SIP submission.

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

State	Compliance supplement pool (tons of NO <sub>x</sub> )
Alabama .....	8,962
Connecticut .....	569
Delaware .....	168
District of Columbia .....	0
Illinois .....	17,688
Indiana .....	19,915
Kentucky .....	13,520
Maryland .....	3,882
Massachusetts .....	404
Michigan .....	9,907
Missouri .....	5,630
New Jersey .....	1,550
New York .....	2,764
North Carolina .....	10,737

State	Compliance supplement pool (tons of NO <sub>x</sub> )
Ohio .....	22,301
Pennsylvania .....	15,763
Rhode Island .....	15
South Carolina .....	5,344
Tennessee .....	10,565
Virginia .....	5,504
West Virginia .....	16,709
Total .....	182,625

(iv) The SIP revision may provide for the distribution of the compliance supplement pool to sources that are required to implement control measures using one or both of the following two mechanisms:

(A) The State may issue some or all of the compliance supplement pool to sources that implement emissions reductions during the ozone season beyond all applicable requirements in the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

(1) The State shall complete the issuance process by no later than the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

(2) The emissions reduction may not be required by the State's SIP or be otherwise required by the CAA.

(3) The emissions reductions must be verified by the source as actually having occurred during an ozone season between September 30, 1999 and the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

(4) The emissions reduction must be quantified according to procedures set forth in the SIP revision and approved by EPA. Emissions reductions implemented by sources serving electric generators with a nameplate capacity greater than 25 MWe, or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr, must be quantified according to the requirements in paragraph (i)(4) of this section.

(5) If the SIP revision contains approved provisions for an emissions trading program, sources that receive credit according to the requirements of this paragraph may trade the credit to other sources or persons according to the provisions in the trading program.

(B) The State may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension of the earliest date on which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section according to the following provisions:

(1) The State shall initiate the issuance process by the later date of September 30 before the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section or after the State issues credit according to the procedures in paragraph (e)(4)(iv)(A) of this section.

(2) The State shall complete the issuance process by no later than the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

(3) The State shall issue credit to a source only if the source demonstrates the following:

(i) For a source used to generate electricity, compliance with the SIP revision's applicable control measures by the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with the SIP revision.

(ii) For a source not used to generate electricity, compliance with the SIP revision's applicable control measures by the commencement of the first

## Environmental Protection Agency

## § 51.121

ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in paragraph (e)(4)(iv)(B)(3)(i) of this section.

(iii) For a source subject to an approved SIP revision that allows for early reduction credits in accordance with paragraph (e)(4)(iv)(A) of this section, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

(iv) For a source subject to an approved emissions trading program, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

(4) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a source under paragraph (e)(3)(iv)(B) of this section.

(5) If, no later than February 22, 1999, any member of the public requests revisions to the source-specific data and vehicle miles traveled (VMT) and nonroad mobile growth rates, VMT distribution by vehicle class, average speed by roadway type, inspection and maintenance program parameters, and other input parameters used to establish the State budgets set forth in paragraph (e)(2) of this section or the 2007 baseline sub-inventory information set forth in paragraph (g)(2)(ii) of this section, then EPA will act on that request no later than April 23, 1999 provided:

(i) The request is submitted in electronic format;

(ii) Information is provided to corroborate and justify the need for the requested modification;

(iii) The request includes the following data information regarding any electricity-generating source at issue:

(A) Federal Information Placement System (FIPS) State Code;

(B) FIPS County Code;

(C) Plant name;

(D) Plant ID numbers (ORIS code preferred, State agency tracking number also or otherwise);

(E) Unit ID numbers (a unit is a boiler or other combustion device);

(F) Unit type;

(G) Primary fuel on a heat input basis;

(H) Maximum rated heat input capacity of unit;

(I) Nameplate capacity of the largest generator the unit serves;

(J) Ozone season heat inputs for the years 1995 and 1996;

(K) 1996 (or most recent) average NO<sub>x</sub> rate for the ozone season;

(L) Latitude and longitude coordinates;

(M) Stack parameter information ;

(N) Operating parameter information;

(O) Identification of specific change to the inventory; and

(P) Reason for the change;

(iv) The request includes the following data information regarding any non-electricity generating point source at issue:

(A) FIPS State Code;

(B) FIPS County Code;

(C) Plant name;

(D) Facility primary standard industrial classification code (SIC);

(E) Plant ID numbers (NEDS, AIRS/AFS, and State agency tracking number also or otherwise);

(F) Unit ID numbers (a unit is a boiler or other combustion device);

(G) Primary source classification code (SCC);

(H) Maximum rated heat input capacity of unit;

(I) 1995 ozone season or typical ozone season daily NO<sub>x</sub> emissions;

(J) 1995 existing NO<sub>x</sub> control efficiency;

(K) Latitude and longitude coordinates;

(L) Stack parameter information;

(M) Operating parameter information;

(N) Identification of specific change to the inventory; and

(O) Reason for the change;

(v) The request includes the following data information regarding any stationary area source or nonroad mobile source at issue:

- (A) FIPS State Code;
- (B) FIPS County Code;
- (C) Primary source classification code (SCC);
- (D) 1995 ozone season or typical ozone season daily NO<sub>x</sub> emissions;
- (E) 1995 existing NO<sub>x</sub> control efficiency;
- (F) Identification of specific change to the inventory; and
- (G) Reason for the change;
- (vi) The request includes the following data information regarding any highway mobile source at issue:

- (A) FIPS State Code;
- (B) FIPS County Code;
- (C) Primary source classification code (SCC) or vehicle type;
- (D) 1995 ozone season or typical ozone season daily vehicle miles traveled (VMT);
- (E) 1995 existing NO<sub>x</sub> control programs;
- (F) identification of specific change to the inventory; and
- (G) reason for the change.

(f) Each SIP revision must set forth control measures to meet the NO<sub>x</sub> budget in accordance with paragraph (b)(1)(i) of this section, which include the following:

(1) A description of enforcement methods including, but not limited to:

- (i) Procedures for monitoring compliance with each of the selected control measures;
- (ii) Procedures for handling violations; and
- (iii) A designation of agency responsibility for enforcement of implementation.

(2) Should a State elect to impose control measures on fossil fuel-fired NO<sub>x</sub> sources serving electric generators with a nameplate capacity greater than 25 MWe or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr as a means of meeting its NO<sub>x</sub> budget, then those measures must:

(i)(A) Impose a NO<sub>x</sub> mass emissions cap on each source;

(B) Impose a NO<sub>x</sub> emissions rate limit on each source and assume maximum operating capacity for every such source for purposes of estimating mass NO<sub>x</sub> emissions; or

(C) Impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than options in paragraphs (f)(2)(i)(A) or (f)(2)(i)(B) of this section that the State will comply with its NO<sub>x</sub> budget in the 2007 ozone season; and

(ii) Impose enforceable mechanisms, in accordance with paragraphs (b)(1) (i) and (ii) of this section, to assure that collectively all such sources, including new or modified units, will not exceed in the 2007 ozone season the total NO<sub>x</sub> emissions projected for such sources by the State pursuant to paragraph (g) of this section.

(3) For purposes of paragraph (f)(2) of this section, the term “fossil fuel-fired” means, with regard to a NO<sub>x</sub> source:

(i) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a NO<sub>x</sub> source had no heat input starting in 1995, during the last year of operation of the NO<sub>x</sub> source prior to 1995; or

(ii) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the NO<sub>x</sub> source shall be “fossil fuel-fired” as of the date, during such year, on which the NO<sub>x</sub> source begins combusting fossil fuel.

(g)(1) Each SIP revision must demonstrate that the control measures contained in it are adequate to provide for the timely compliance with the State’s NO<sub>x</sub> budget during the 2007 ozone season.

(2) The demonstration must include the following:

(i) Each revision must contain a detailed baseline inventory of NO<sub>x</sub> mass emissions from the following sources in the year 2007, absent the control measures specified in the SIP submission: electric generating units (EGU), non-electric generating units (non-EGU), area, nonroad and highway sources. The State must use the same baseline emissions inventory that EPA used in calculating the State’s NO<sub>x</sub> budget, as

**Environmental Protection Agency**

**§ 51.121**

set forth for the State in paragraph (g)(2)(ii) of this section, except that EPA may direct the State to use different baseline inventory information if the State fails to certify that it has implemented all of the control meas-

ures assumed in developing the baseline inventory.

(ii) The revised NO<sub>x</sub> emissions sub-inventories for each State, expressed in tons per ozone season, are as follows:

State	EGU	Non-EGU	Area	Nonroad	Highway	Total
Alabama .....	29,022	43,415	28,762	20,146	51,274	172,619
Connecticut .....	2,652	5,216	4,821	10,736	19,424	42,849
Delaware .....	5,250	2,473	1,129	5,651	8,358	22,861
District of Columbia .....	207	282	830	3,135	2,204	6,658
Illinois .....	32,372	59,577	9,369	56,724	112,518	270,560
Indiana .....	47,731	47,363	29,070	26,494	79,307	229,965
Kentucky .....	36,503	25,669	31,807	15,025	53,268	162,272
Maryland .....	14,656	12,585	4,448	20,026	30,183	81,898
Massachusetts .....	15,146	10,298	11,048	20,166	28,190	84,848
Michigan .....	32,228	60,055	31,721	26,935	78,763	229,702
Missouri .....	24,216	21,602	7,341	20,829	51,615	125,603
New Jersey .....	10,250	15,464	12,431	23,565	35,166	96,876
New York .....	31,036	25,477	17,423	42,091	124,261	240,288
North Carolina .....	31,821	26,434	11,067	22,005	73,695	165,022
Ohio .....	48,990	40,194	21,860	43,380	94,850	249,274
Pennsylvania .....	47,469	70,132	17,842	30,571	91,578	257,592
Rhode Island .....	997	1,635	448	2,455	3,843	9,378
South Carolina .....	16,772	27,787	9,415	14,637	54,494	123,105
Tennessee .....	25,814	39,636	13,333	52,920	66,342	198,045
Virginia .....	17,187	35,216	27,738	27,859	72,195	180,195
West Virginia .....	26,859	20,238	5,459	10,433	20,844	83,833
Wisconsin .....	17,381	19,853	11,253	17,965	69,319	135,771
<b>Total .....</b>	<b>544,961</b>	<b>640,317</b>	<b>321,827</b>	<b>540,215</b>	<b>1,310,466</b>	<b>3,357,786</b>

Note to paragraph (g)(2)(ii): Totals may not sum due to rounding.

(iii) Each revision must contain a summary of NO<sub>x</sub> mass emissions in 2007 projected to result from implementation of each of the control measures specified in the SIP submission and from all NO<sub>x</sub> sources together following implementation of all such control measures, compared to the baseline 2007 NO<sub>x</sub> emissions inventory for the State described in paragraph (g)(2)(i) of this section. The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2007 NO<sub>x</sub> emissions that will be achieved from the implementation of the new control measures compared to the baseline emissions inventory.

(iv) Each revision must identify the sources of the data used in the projection of emissions.

(h) Each revision must comply with § 51.116 of this part (regarding data availability).

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to

meet the NO<sub>x</sub> budget. Specifically, the revision must meet the following requirements:

(1) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State:

(i) Information on the amount of NO<sub>x</sub> emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The revision must comply with § 51.212 of this part (regarding testing, inspection, enforcement, and complaints);

(3) If the revision contains any transportation control measures, then the revision must comply with § 51.213 of this part (regarding transportation control measures);

(4) If the revision contains measures to control fossil fuel-fired NO<sub>x</sub> sources serving electric generators with a

**§51.121**

**40 CFR Ch. I (7-1-10 Edition)**

nameplate capacity greater than 25 MWe or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to comply with the monitoring provisions of part 75, subpart H.

(5) For purposes of paragraph (i)(4) of this section, the term “fossil fuel-fired” means, with regard to a NO<sub>x</sub> source:

(i) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a NO<sub>x</sub> source had no heat input starting in 1995, during the last year of operation of the NO<sub>x</sub> source prior to 1995; or

(ii) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the NO<sub>x</sub> source shall be “fossil fuel-fired” as of the date, during such year, on which the NO<sub>x</sub> source begins combusting fossil fuel.

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State’s NO<sub>x</sub> budget specified in paragraph (e) of this section;

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

(4) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any

applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under section 114 of the CAA.

(1)(1) A revision may assign legal authority to local agencies in accordance with §51.232 of this part.

(2) Each revision must comply with §51.240 of this part (regarding general plan requirements).

(m) Each revision must comply with §51.280 of this part (regarding resources).

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

(o) Each revision must provide for State compliance with the reporting requirements set forth in §51.122 of this part.

(p)(1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to 40 CFR part 96 (the model NO<sub>x</sub> budget trading program for SIPs), incorporates such part by reference into its regulations, or adopts regulations that differ substantively from such part only as set forth in paragraph (p)(2) of this section, then that portion of the State’s SIP revision is automatically approved as satisfying the same portion of the State’s NO<sub>x</sub> emission reduction obligations as the State projects such regulations will satisfy, provided that:

(i) The State has the legal authority to take such action and to implement its responsibilities under such regulations, and

## Environmental Protection Agency

## § 51.122

(ii) The SIP revision accurately reflects the NO<sub>x</sub> emissions reductions to be expected from the State's implementation of such regulations.

(2) If a State adopts an emissions trading program that differs substantively from 40 CFR part 96 in only the following respects, then such portion of the State's SIP revision is approved as set forth in paragraph (p)(1) of this section:

(i) The State may expand the applicability provisions of the trading program to include units (as defined in 40 CFR 96.2) that are smaller than the size criteria thresholds set forth in 40 CFR 96.4(a);

(ii) The State may decline to adopt the exemption provisions set forth in 40 CFR 96.4(b);

(iii) The State may decline to adopt the opt-in provisions set forth in subpart I of 40 CFR part 96;

(iv) The State may decline to adopt the allocation provisions set forth in subpart E of 40 CFR part 96 and may instead adopt any methodology for allocating NO<sub>x</sub> allowances to individual sources, provided that:

(A) The State's methodology does not allow the State to allocate NO<sub>x</sub> allowances in excess of the total amount of NO<sub>x</sub> emissions which the State has assigned to its trading program; and

(B) The State's methodology conforms with the timing requirements for submission of allocations to the Administrator set forth in 40 CFR 96.41; and

(v) The State may decline to adopt the early reduction credit provisions set forth in 40 CFR 96.55(c) and may instead adopt any methodology for issuing credit from the State's compliance supplement pool that complies with paragraph (e)(3) of this section.

(3) If a State adopts an emissions trading program that differs substantively from 40 CFR part 96 other than as set forth in paragraph (p)(2) of this section, then such portion of the State's SIP revision is not automatically approved as set forth in paragraph (p)(1) of this section but will be reviewed by the Administrator for approvability in accordance with the other provisions of this section.

(q) *Stay of Findings of Significant Contribution with respect to the 8-hour stand-*

*ard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraph (a)(2) of this section is stayed.

(r)(1) Notwithstanding any provisions of paragraph (p) of this section, subparts A through I of part 96 of this chapter, and any State's SIP to the contrary, the Administrator will not carry out any of the functions set forth for the Administrator in subparts A through I of part 96 of this chapter, or in any emissions trading program in a State's SIP approved under paragraph (p) of this section, with regard to any ozone season that occurs after September 30, 2008.

(2) Except as provided in § 51.123(bb), a State whose SIP is approved as meeting the requirements of this section and that includes an emissions trading program approved under paragraph (p) of this section must revise the SIP to adopt control measures that satisfy the same portion of the State's NO<sub>x</sub> emission reduction requirements under this section as the State projected such emissions trading program would satisfy.

[63 FR 57491, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998; 64 FR 26305, May 14, 1999; 65 FR 11230, Mar. 2, 2000; 65 FR 56251, Sept. 18, 2000; 69 FR 21642, Apr. 21, 2004; 70 FR 25317, May 12, 2005; 70 FR 51597, Aug. 31, 2005; 73 FR 21538, Apr. 22, 2008]

### **§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO<sub>x</sub> emissions.**

(a) As used in this section, words and terms shall have the meanings set forth in § 51.50.

(b) For its transport SIP revision under § 51.121, each state must submit to EPA NO<sub>x</sub> emissions data as described in this section.

(c) Each revision must provide for periodic reporting by the state of NO<sub>x</sub> emissions data to demonstrate whether the state's emissions are consistent with the projections contained in its approved SIP submission.

(1) For the every-year reporting cycle, each revision must provide for reporting of NO<sub>x</sub> emissions data every year as follows:

(i) The state must report to EPA emissions data from all NO<sub>x</sub> sources within the state for which the state