rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction. Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at http://www.regulations.gov. If your material cannot be submitted using http://www.regulations.gov, contact the person listed in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to http://www.regulations.gov and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at http://www.regulations.gov and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:


2. Amend § 117.324 to read as follows:

§117.324 Rice Creek.

The CSX Railroad Swing Bridge, mile 0.8, in Putnam County, shall open with a 24-hour advance notice to CSX at 1–800–232–0142.

Dated: November 4, 2016.

S.A. Buschman,
Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–27176 Filed 11–9–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


RIN 2060–AT16

Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to withdraw the federal implementation plan (FIP) provisions that require affected electricity generating units (EGUs) in Texas to participate in Phase 2 of the Cross-State Air Pollution Rule (CSAPR) trading programs for annual emissions of sulfur dioxide (SO2) and nitrogen oxides (NOx). Withdrawal of the FIP requirements is intended to address a decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanding the CSAPR Phase 2 SO2 budget for Texas to the EPA for reconsideration. The EPA is also proposing to determine that, following withdrawal of the FIP requirements, sources in Texas will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 national ambient air quality standard (NAAQS) for fine particulate matter (PM2.5), and that the EPA therefore will have no obligation to issue new FIP requirements for Texas sources to address transported PM2.5 pollution under Clean Air Act (CAA) section 110(a)(2)(D)(ii)(I) with regard to that NAAQS. Finally, the proposal includes a sensitivity analysis showing that the set of actions the EPA has taken or expects to take in response to the D.C. Circuit’s decision, including the removal of Texas EGUs from the two CSAPR trading programs as well as the recent removal of Florida EGUs from Phase 2 of the CSAPR trading programs for ozone-season NOx emissions, would not adversely impact the analytic demonstration for the Agency’s 2012 determination that CSAPR participation meets the Regional Haze Rule’s criteria to qualify as an alternative to the application of best available retrofit technology (BART). No changes to the Regional Haze Rule are proposed as part of this rulemaking.

DATES: Comments must be received on or before December 12, 2016. To request a public hearing, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section below by November 17, 2016. The EPA does not plan to conduct a public hearing unless requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0598, at http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit...
Federal Register / Vol. 81, No. 218 / Thursday, November 10, 2016 / Proposed Rules 78955

http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9077; email address: miller.robert@epa.gov.

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

<table>
<thead>
<tr>
<th>Category</th>
<th>NAICS * Code</th>
<th>Examples of potentially regulated industries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fossil fuel-fired electric power generation.</td>
<td>221112</td>
<td></td>
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</tbody>
</table>

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions in 40 CFR 97.404 and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section above.

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

I. Overview

The EPA promulgated CSAPR in 2011 in order to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(i)(I) to prohibit air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to several NAAQS, including the 1997 annual PM2.5 NAAQS.5 To address Texas’ transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS, CSAPR established FIP requirements for affected EGUs in Texas, including emissions budgets that apply to the EGUs’ collective annual emissions of SO2 and NOX. In July 2015, the D.C. Circuit issued a decision on a range of challenges to CSAPR in EME Homer City Generation, L.P. v. EPA (EME Homer City II) denying most claims but remanding several CSAPR emissions budgets to the EPA for reconsideration, including the Phase 2 SO2 budget for Texas.2 In this action, the EPA proposes to address the remand of the Texas Phase 2 SO2 budget by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO2 Group 2 Trading Program and the CSAPR NOX Annual Trading Program in Phase 2, which begins with 2017 emissions.3 Although the court’s decision specifically remanded only Texas’ Phase 2 SO2 budget, the court’s rationale for remanding that budget also implicates Texas’ Phase 2 annual NOX budget because the SO2 and annual NOX budgets were developed through an integrated analysis and were promulgated to meet a common PM2.5 transport obligation under CAA section 110(a)(2)(D)(i)(I). Withdrawal of the FIP provisions is intended to address the remand by eliminating the requirement for Texas EGUs to comply with the EPA-established Phase 2 budgets.4

Removal of Texas EGUs from the CSAPR trading programs for SO2 and annual NOX as proposed would make it necessary to use other means to address any remaining transport obligation for Texas under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 PM2.5 NAAQS. In this action, based on a reevaluation of PM2.5 data in the CSAPR final rule record in light of the D.C. Circuit’s reasoning in another portion of the EME Homer City II decision, the EPA is proposing to determine that Texas would not have any such remaining PM2.5 transport obligation in Phase 2 of CSAPR.

Accordingly, in the absence of a Texas transport obligation with regard to the 1997 PM2.5 NAAQS, the EPA is also proposing to determine that the Agency will have no obligation to issue new FIP requirements for Texas sources to address transported PM2.5 pollution under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS.5

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2 EME Homer City Generation, L.P. v. EPA (EME Homer City II), 795 F.3d 138 (D.C. Cir. 2015). The court also remanded the Phase 2 SO2 budgets for three other states and the Phase 2 ozone transport NOX budgets for eleven states, including Texas. Id.

3 With regard to each of the other remanded budgets, the EPA either has already withdrawn or expects to withdraw the FIP provisions requiring the EGUs in the affected state to participate in the corresponding CSAPR federal trading programs in Phase 2 through other actions, as discussed in section III.

4 The D.C. Circuit also remanded the CSAPR Phase 2 ozone-season NO2 budget established for Texas EGUs with regard to the 1997 ozone NAAQS. EME Homer City II, 795 F.3d at 138. As discussed in section II, in another action the EPA has withdrawn the FIP requirements for Texas EGUs regarding the 1997 ozone NAAQS and has promulgated new FIP requirements for those EGUs regarding the 2008 ozone NAAQS. This proposal has no effect on any CSAPR FIP requirements for Texas EGUs concerning ozone-season NO2 emissions.

5 Reevaluation of PM2.5 data in the CSAPR final rule record in light of the D.C. Circuit’s reasoning would similarly support a determination that Texas would have no PM2.5 transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 2008 ozone NAAQS. However, the EPA is not proposing to make a determination in this action as to any obligation of Texas with regard to that NAAQS because Texas EGUs are not subject to CSAPR requirements with regard to that NAAQS.
Participation in CSAPR is relied on by numerous states as an alternative to meeting source-specific BART requirements under the Regional Haze Rule. In accordance with the provisions of the Regional Haze Rule, the EPA’s 2012 determination that implementation of CSAPR meets the criteria for a BART alternative was based on an analytic demonstration that implementation of CSAPR would result in greater reasonable progress than BART toward restoring natural visibility conditions in relevant locations. This proposal includes a sensitivity analysis showing that if the set of actions the EPA has taken or expects to take in response to the D.C. Circuit’s remand of various CSAPR Phase 2 budgets had been reflected in that analytic demonstration, the revised analysis still would have demonstrated that implementation of CSAPR in the remaining covered states meets the criteria for a BART alternative for those states. Accordingly, based on consideration of this analysis, the EPA sees no reason to propose any revision to the current Regional Haze Rule provision allowing states whose EGUs continue to participate in a CSAPR trading program for a given pollutant to rely on CSAPR participation as a BART alternative for its BART-eligible EGUs for that pollutant.

At the same time, however, if and when this proposal is finalized, Texas will no longer be eligible to rely on CSAPR participation as an alternative to certain regional haze obligations including the determination and application of source-specific SO\textsubscript{2} BART. Any such remaining obligations are not addressed in this proposed action and would be addressed through other state implementation plan (SIP) or FIP actions as appropriate.

Sections II.A and II.B provide background on CSAPR and on CSAPR participation as a BART alternative, respectively. The proposed withdrawal of the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO\textsubscript{2} and annual NO\textsubscript{X} is addressed in section III. Section IV discusses the proposal to determine that, following finalization of the proposed withdrawal of the CSAPR FIP requirements related to PM\textsubscript{2.5}, Texas would have no remaining transport obligation under CAA section 110(a)(2)(D)(ii), with regard to the 1997 PM\textsubscript{2.5} NAAQS, and the EPA accordingly would have no obligation to issue new FIP requirements for Texas sources to address such a transport obligation. The sensitivity analysis of the 2012 analytic demonstration supporting CSAPR participation as a BART alternative is described in section V.

II. Background  
A. History and Summary of CSAPR

The EPA initially promulgated CSAPR in 2011 to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(ii), often referred to as the “good neighbor” provision, to prohibit transported air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to the 1997 annual PM\textsubscript{2.5} NAAQS, the 2006 24-hour PM\textsubscript{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. To reduce transported PM\textsubscript{2.5} pollution, CSAPR sets limits on annual emissions of NO\textsubscript{X} and SO\textsubscript{2} as precursors to PM\textsubscript{2.5}. To reduce transported ozone pollution, CSAPR sets limits on ozone-season emissions of NO\textsubscript{X} as a precursor to ozone.

CSAPR’s emissions limitations are defined in terms of emissions “budgets” for the collective emissions from affected EGUs in each covered state. The emissions limitations are phased in, with the Phase 1 and Phase 2 budgets originally scheduled to apply starting in January 2012 and January 2014, respectively. Affected EGUs are subject to FIP provisions requiring them to participate in one or more of several CSAPR federal allowance trading programs established as flexible mechanisms to achieve compliance with the emissions budgets. CSAPR also contains provisions under which the EPA will approve optional SIP revisions that modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport obligations using either the CSAPR federal trading programs or integrated CSAPR state trading programs that apply emissions budgets of the same or greater stringency. A number of state, industry, and other petitioners challenged CSAPR in the D.C. Circuit, which stayed and then vacated the rule, ruling on only a subset of petitioners’ claims. However, in April 2014 the Supreme Court reversed the vacatur and remanded to the D.C. Circuit for resolution of petitioners’ remaining claims. The D.C. Circuit then granted the EPA’s motion to lift the stay and to toll the rule’s deadlines by three years. Consequently, implementation of CSAPR Phase 1 began in January 2015 and implementation of Phase 2 is scheduled to begin in January 2017. Following the Supreme Court remand, the D.C. Circuit conducted further proceedings to address petitioners’ remaining claims. In July 2015, the court issued a decision denying most of the claims but remanding the Phase 2 SO\textsubscript{2} emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 ozone-season NO\textsubscript{X} budgets for eleven states to the EPA for reconsideration. Petitions challenging CSAPR amendments promulgated in 2011 and 2012 are currently being held in abeyance pending completion of the EPA’s proceedings in response to the D.C. Circuit’s remand.

Since receipt of the D.C. Circuit’s 2015 decision, the EPA has engaged the affected states to determine appropriate next steps to address the decision with regard to each state. The EPA expects that potentially material changes to the scope of CSAPR coverage resulting from the D.C. Circuit’s remand will be limited to Texas, based on the withdrawal of FIP requirements proposed here, and, as discussed below, to Florida, based on the withdrawal of FIP requirements recently finalized in another action. With regard to the remanded Phase 2 SO\textsubscript{2} budgets, as discussed in section III, the EPA expects that EGUs in Alabama, Georgia, and South Carolina will continue to participate in CSAPR trading programs for SO\textsubscript{2} and annual NO\textsubscript{X} pursuant to approved SIP revisions (with equally or more stringent emissions budgets), making Texas the only state whose EGUs would no longer participate in these programs because of the remand.


The EPA notes that under 40 CFR 51.308(e)(4), CSAPR implementation is available as a NO\textsubscript{X} BART alternative for a state whose EGUs are subject to CSAPR requirements for either annual NO\textsubscript{X} emissions or ozone-season NO\textsubscript{X} emissions. See 77 FR at 33652; see also supra note 4.

See generally 76 FR 48208. See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.
With regard to the remanded ozone-season NO\textsubscript{2} budgets, in September 2016 the EPA promulgated a final rule updating CSAPR to address states’ good neighbor obligations with regard to the 2008 ozone NAAQS.\textsuperscript{14} The rule also responded to the remand of the original Phase 2 ozone-season NO\textsubscript{x} budgets established to address transport obligations with regard to the 1997 ozone NAAQS by withdrawing the FIP provisions requiring EGUs in the eleven states with remanded budgets to comply with those budgets for emissions after 2016. The EPA determined that none of those eleven states will have a remaining transport obligation under CAA section 110(a)(2)(D)(i)(I)\textsuperscript{15} with regard to the 1997 ozone NAAQS, but for eight of those states, including Texas, the rule established new budgets to address transport obligations with regard to the more stringent 2008 ozone NAAQS. EGUs in the three states with remanded Phase 2 ozone-season NO\textsubscript{x} budgets for which the EPA did not establish new budgets—Florida, North Carolina, and South Carolina—are no longer required to participate in a CSAPR trading program for ozone-season NO\textsubscript{x} emissions to address ozone transport obligations after 2016. However, because EGUs in North Carolina and South Carolina\textsuperscript{15} are expected to continue to participate in a CSAPR trading program for annual NO\textsubscript{x} emissions in order to address PM\textsubscript{2.5} transport obligations, Florida is expected to be the only state originally covered by CSAPR for NO\textsubscript{x} emissions for which all such coverage is ending as a result of the EPA’s set of actions to address the remand.

Texas EGUs are currently subject to CSAPR FIP provisions requiring participation in the CSAPR SO\textsubscript{2} Group 2 Trading Program and the CSAPR NO\textsubscript{x} Annual Trading Program. Texas EGUs are also subject to FIP provisions requiring participation in other CSAPR federal trading programs for ozone-season NO\textsubscript{x} emissions. This proposal would withdraw the FIP provisions requiring Texas EGUs to participate in the CSAPR trading programs for SO\textsubscript{2} and annual NO\textsubscript{x} emissions after 2016, but would have no effect on any CSAPR FIP requirements applicable to Texas EGUs relating to ozone-season NO\textsubscript{x} emissions after 2016, which, as discussed in the preceding paragraph, were promulgated in the recently finalized CSAPR Update rule and were not subject to the D.C. Circuit’s remand.

**B. CSAPR Participation as a BART Alternative**

The Regional Haze Rule implements CAA requirements for the protection of visibility, focusing on visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area.\textsuperscript{16} CAA section 169A(a)(1) sets a national goal of achieving natural visibility conditions in certain Class I areas.\textsuperscript{17} CAA section 169A(b)(2) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward this national goal, including requirements for the application of best available retrofit technology (BART) by any BART-eligible sources\textsuperscript{18} that emit any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area. The air pollutants that may cause or contribute to visibility impairment include both SO\textsubscript{2} and NO\textsubscript{x}. Under CAA section 110(c), where the EPA disapproves or finds that a state has failed to make such a SIP submittal, the EPA must promulgate a FIP addressing these requirements.

The Regional Haze Rule’s BART provisions generally direct states to identify all BART-eligible sources; determine which of those BART-eligible sources are subject to BART requirements; source-specific BART controls, so long as the alternative measure is demonstrated to achieve greater reasonable progress than BART toward the national goal of achieving natural visibility conditions in Class I areas.\textsuperscript{20} The Regional Haze Rule also sets out criteria for demonstrating that an alternative measure achieves greater reasonable progress than source-specific BART. The regulations include a specific so-called “better-than-BART” test that may be satisfied in one of two ways: (1) If the distribution of emissions under the alternative measure is not substantially different than under BART and the alternative measure results in greater emission reductions; or (2) if the distribution of emissions is significantly different and an air quality modeling study for the best and worst 20 percent of days shows an improvement in visibility from the alternative measure relative to BART.\textsuperscript{21} In order for the alternative measure to pass this “better-than-BART” test based on such an air quality modeling study, the modeling must demonstrate that two criteria (referred to below as “prongs”) are met: first, visibility does not decline in any Class I area, and second, there is an overall improvement in visibility, determined by comparing the average differences in visibility conditions under BART and the alternative measure across all affected Class I areas. In addition to the specific test, the regulations also include a more general test that allows states (or the EPA) to demonstrate that an alternative measure provides for greater reasonable progress than BART based on the clear weight of evidence.\textsuperscript{22}

In 2012, the EPA amended the Regional Haze Rule to provide that participation by a state’s EGUs in a CSAPR trading program for a given pollutant—either a CSAPR federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant.\textsuperscript{23}
promulgating the amendment, the EPA relied on an analytic demonstration of an improvement in visibility from CSAPR implementation relative to BART based on an air quality modeling study, in accordance with the second approach to the specific better-than-BART test summarized above. Since the EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.24 For purposes of the 2012 analytic demonstration that CSAPR provides for greater reasonable progress than BART, the EPA treated Texas EGUs as subject to CSAPR for SO\(_2\) and annual NO\(_X\) (as well as ozone-season NO\(_X\)) and treated Florida EGUs as subject to CSAPR for ozone-season NO\(_X\). The EPA recognizes that the treatment of these EGUs in the analysis would have been different if the Florida FIP withdrawal recently finalized and the Texas FIP withdrawal proposed in this action had been known before the demonstration was prepared. In order to address any potential concerns about continuing to rely on CSAPR participation as a BART alternative for EGUs in the remaining CSAPR states, the EPA is providing a sensitivity analysis explicitly addressing the potential effect on the 2012 analytic demonstration if the treatment of Texas and Florida EGUs had been consistent with the EPA’s expectations for the updated scope of CSAPR coverage following the D.C. Circuit’s remand. As discussed in section V below, the analysis supports the continued conclusion that CSAPR participation would achieve greater reasonable progress than BART despite such a change in the treatment of Texas and Florida EGUs. Consequently, the proposed FIP withdrawal does not suggest any reason to consider amending the current Regional Haze Rule provision authorizing the use of CSAPR participation as a BART alternative for BART-eligible EGUs for a given pollutant in states whose EGUs continue to participate in a CSAPR trading program for that pollutant.

### III. Withdrawal of Certain CSAPR FIP Requirements for Texas EGUs

As summarized in section I above, the EPA proposes to respond to the D.C. Circuit’s remand of the CSAPR Phase 2 SO\(_2\) budget for Texas by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO\(_2\) and annual NO\(_X\) emissions with regard to emissions occurring after 2016. This section discusses the rationale for this proposed action.

In the CSAPR final rule, the EPA determined that 23 states, including Texas, had transport obligations with regard to the 1997 annual PM\(_{2.5}\) NAAQS, the 2006 24-hour PM\(_{2.5}\) NAAQS, or both, and established SO\(_2\) and annual NO\(_X\) emissions budgets for each of the states.25 The first step in the EPA’s analysis was to identify PM\(_{2.5}\) receptors that were projected to have difficulty attaining or maintaining either the 1997 NAAQS or the 2006 NAAQS in 2012 without emission reductions from CSAPR. In the second step, the EPA identified states that contribute more than a threshold amount of PM\(_{2.5}\) pollution (i.e., one percent of the NAAQS) for at least one of those receptors linked to that nonattainment or maintenance receptors in a different state—in other words, a “linkage” was determined. In the third step, the EPA projected the SO\(_2\) and annual NO\(_X\) emissions reductions and the remaining emissions that would be achieved by EGUs in all modeled states at a range of control cost levels as well as the resulting improvements in air quality at each of the identified PM\(_{2.5}\) receptors. For annual NO\(_X\), the EPA evaluated a range of control cost levels up to $2,500 per ton, and for SO\(_2\), the EPA evaluated a range of control cost levels up to $10,000 per ton in combination with a NO\(_X\) control cost level of $500 per ton. The EPA then set SO\(_2\) and annual NO\(_X\) emissions budgets for EGUs in each of the 23 covered states at the remaining emissions corresponding to a combination of SO\(_2\) and annual NO\(_X\) control cost levels at which the air quality problems at all, or most, of the receptors linked to that state were projected to be resolved. The budgets were implemented through FIP provisions requiring the affected EGUs to participate in allowable trading programs.

In the case of seven states, including Alabama, Georgia, South Carolina, and Texas, the PM\(_{2.5}\) air quality problems at all linked receptors were projected to be resolved at an SO\(_2\) control cost level of $500 per ton. The CSAPR SO\(_2\) budgets for these states were therefore set based on the projected SO\(_2\) emissions remaining after the reductions achievable at that control cost level. For the other 16 states covered by CSAPR for PM\(_{2.5}\), the air quality problems at all linked receptors were not projected to be resolved until (or after) an SO\(_2\) control cost level of $2,300 per ton, and the CSAPR SO\(_2\) budgets were set based on the projected SO\(_2\) emissions remaining after the reductions achievable at that higher cost level. For all 23 states linked to a PM\(_{2.5}\) receptor, the CSAPR annual NO\(_X\) budgets were set based on the projected NO\(_X\) emissions remaining after the reductions achievable at a control cost level of $500 per ton. The EPA promulgated FIP provisions requiring EGUs in the 16 states whose SO\(_2\) budgets were set based on a $2,300-per-ton SO\(_2\) control cost level to participate in the CSAPR SO\(_2\) Group 1 Trading Program, requiring EGUs in the seven states whose SO\(_2\) budgets were set based on a $500-per-ton SO\(_2\) control cost level to participate in the CSAPR SO\(_2\) Group 2 Trading Program, and requiring EGUs in all 23 states to participate in the CSAPR NO\(_X\) Annual Trading Program. Petitioners challenged the EPA’s use of a $500-per-ton control cost level to set the SO\(_2\) budgets for Alabama, Georgia, South Carolina, and Texas, citing an analysis the EPA had prepared for the CSAPR proposal projecting that the air quality problems at certain PM\(_{2.5}\) receptors would be resolved at SO\(_2\) control cost levels below $500 per ton. In its July 2015 decision, the D.C. Circuit agreed that because modeling in the rulemaking record from the CSAPR proposal indicated that air quality problems at all PM\(_{2.5}\) receptors linked to these four states could have been resolved at SO\(_2\) control costs below $500 per ton, the Phase 2 SO\(_2\) budgets set in the CSAPR final rule based on control costs of $500 per ton may be more stringent than necessary to address the four states’ PM\(_{2.5}\) air pollution obligations. The court therefore found the Phase 2 SO\(_2\) budgets for these four states invalid and remanded them to the EPA for reconsideration.26

In this action, the EPA is proposing to respond to the remand of the Phase 2 SO\(_2\) budget for Texas by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO\(_2\) Group 2 Trading Program and the CSAPR NO\(_X\) Annual Trading Program with regard to emissions during Phase 2 of those.

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24 The EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012). The EPA has approved Minnesota’s SIP relying on CSAPR participation for BART purposes. 77 FR 34801, 34806 (June 12, 2012).

The EPA also determined in CSAPR and a related supplemental rule that 25 states, including Texas, had transport obligations with regard to the 1997 8-hour ozone NAAQS. In all, 28 states were determined to have transport obligations related to either PM\(_{2.5}\), ozone, or both. The EPA’s process for determining states’ emissions limitations under CSAPR and the associated CSAPR FIP requirements is described at length in the preamble to the CSAPR final rule. See generally 77 FR at 48222–71.

26 EME Homer City II, 795 F.3d at 128–29.
programs, which is now scheduled to begin in 2017. Withdrawal of the FIP provisions related to the SO2 trading program encompasses withdrawal of the requirement for Texas EGUs to comply with the remanded Phase 2 SO2 budget, thereby addressing the specific rule provision remanded by the court. The EPA is proposing to withdraw the FIP provisions related to annual NOx in addition to the FIP provisions related to SO2 because, as just discussed, the CSAPR FIP requirements for SO2 and annual NOx applicable to EGUs in each covered state were determined through an integrated analysis and were promulgated in combination to remedy that state’s PM2.5 transport obligation. The court’s finding that CSAPR’s Phase 2 requirements may be more stringent than necessary to address Texas’ PM2.5 transport obligation therefore implicates the state’s Phase 2 budgets for both SO2 and annual NOx. The proposed withdrawal of the FIP requirements would be consistent with the approach the EPA has taken in response to previous judicial remands regarding obligations of individual states under other EPA rules addressing multiple states’ transport obligations. For example, in Michigan v. EPA, the court found that the EPA had failed to adequately support the inclusion of Wisconsin in the NOx SIP Call.27 The EPA responded to that remand by amending the rule to exclude Wisconsin.28 Similarly, in North Carolina v. EPA, the court found that the EPA had failed to adequately support the inclusion of Minnesota in the Clean Air Interstate Rule (CAIR) with regard to the 1997 annual PM2.5 NAAQS as well as the corresponding CAIR FIP provisions applicable to Minnesota units.29 The EPA responded to that remand by indefinitely staying CAIR’s PM2.5 transport obligation for Minnesota as well as the CAIR FIP provisions requiring Minnesota units to participate in CAIR’s federal trading programs for SO2 and annual NOx.30 The proposed withdrawal of FIP requirements is also consistent with the actions the EPA either has already taken or expects to take to address the D.C. Circuit’s remand of other CSAPR Phase 2 budgets. With regard to the remanded Phase 2 ozone-season NOx budgets for eleven states, the EPA withdrew the FIP provisions requiring compliance with those budgets in a rule promulgated earlier this year updating CSAPR to address states’ transport obligations with regard to the 2008 ozone NAAQS. Specifically, the EPA amended the FIP provisions applicable to EGUs in the eleven states with remanded budgets to eliminate the CSAPR FIP requirements related to the 1997 ozone NAAQS with regard to emissions occurring after 2016, coincident with the transition from CSAPR Phase 1 to CSAPR Phase 2.31 The EPA determined that none of the eleven states would have remaining transport obligations under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 ozone NAAQS following the FIP withdrawal.32 However, the EPA also determined that eight of the states have transport obligations under that section with regard to the more stringent 2008 ozone NAAQS, and established new CSAPR ozone-season NOx budgets for those states related to that NAAQS starting with emissions occurring in 2017.33 With regard to the remanded Phase 2 SO2 budgets for Alabama, Georgia, and South Carolina, the EPA either has addressed or expects to address the remand through withdrawal of the relevant FIP requirements in the context of SIP approval actions for these states. As discussed in section II.A above, the CSAPR regulations provide each covered state with the option to meet its transport obligations through SIP revisions replacing the federal trading programs and requiring the state’s EGUs to participate in integrated CSAPR state trading programs that apply emissions budgets of the same or greater stringency.34 Under the CSAPR regulations, when such a SIP revision is approved, the corresponding FIP provisions are automatically withdrawn. As discussed in section II.B above, the Regional Haze Rule allows states to rely on CSAPR participation for a given pollutant—through either the CSAPR federal trading program or an integrated CSAPR state trading program—as a BART alternative for that pollutant. Before proposing this action, the EPA communicated with officials in Alabama, Georgia, South Carolina, and Texas regarding the EPA’s intent to respond to the remand of the Phase 2 SO2 budgets by withdrawing the FIP provisions requiring the states’ EGUs to participate in the CSAPR federal trading programs for SO2 and annual NOx.35 The EPA explained that the state would lose its ability to rely on CSAPR participation as a BART alternative for SO2 and/or NOx if its EGUs no longer participated in the CSAPR trading programs, but that the state could preserve that ability, if desired, by submitting a CSAPR SIP revision replacing the CSAPR federal trading programs with integrated CSAPR state trading programs applying state-established budgets no less stringent than the remanded federally-established budgets.36 Alabama, Georgia, and South Carolina have indicated their preference to pursue the SIP revision option. The EPA has already approved Alabama’s CSAPR SIP revision, and the FIP provisions requiring its EGUs to participate in the CSAPR federal trading programs for SO2 and annual NOx, including the requirements to comply with the federally-established SO2 and annual NOx budgets, have therefore been automatically withdrawn.37 Georgia and South Carolina have committed to submit CSAPR SIP revisions,38 and the EPA is not

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22 213 F.3d 663, 681 (D.C. Cir. 2000). Both the court’s decision and the EPA’s response were limited to the NOx SIP Call’s requirements related to the 1979 1-hour ozone NAAQS, because the rule’s parallel requirements related to the 1997 8-hour ozone NAAQS had already been indefinitely stayed as to all states. 23 Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules, 69 FR 21604, 21636–37 (April 21, 2004). 24 531 F.3d 896, 926–28 (D.C. Cir. 2008). 25 Administrative Stay of Clean Air Interstate Rule for Minnesota: Administrative Stay of Federal Implementation Plan to Reduce Interstate Transport of Fine Particulate Matter and Ozone for Minnesota, 74 FR 56721, 56722 (November 3, 2009). 26 See 81 FR at 74576. 27 See 81 FR at 74524. 28 Id. 29 See 40 CFR 52.38 and 52.39. 3031 32 33 34 35 36 37 38 See memos entitled “The U.S. Environmental Protection Agency’s Plan for Responding to the Remand of the Cross-State Air Pollution Rule Phase 2 SO2 Budgets for Alabama, Georgia, South Carolina and Texas” from Janet G. McCabe, EPA Acting Assistant Administrator for Air and Radiation, to EPA Regional Air Division Directors (June 27, 2016), available at https://www3.epa.gov/airtransport/CSAPR/CSAPRpdf/CSAPR_FIP_Memo.pdf and in the docket for this proposed action. The memo directs the Regional Air Division Directors to share the memo with state officials. The EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo. 39 Although the D.C. Circuit remanded the states’ Phase 2 SO2 budgets because it determined that the budgets may be more stringent than necessary to address the states’ identified PM2.5 transport obligations, nothing in the court’s decision affects the states’ authority to seek incorporation into their SIPs of state-established budgets as stringent as the remanded federally-established budgets or limits the EPA’s authority to approve such SIP revisions. See CAA sections 110(a)(2)(D)(i)(I). 40 Air Plan Approval; Alabama; Cross-State Air Pollution Rule, 81 FR 59869 (August 31, 2016). 41 See letters to Heather McTeer Toney, Regional Administrator, EPA Region 4, from Judson H. Turner, Director of the Environmental Protection Division, Georgia Department of Natural Resources (May 26, 2016) and from Myra C. Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control (April 19, 2016), available in the docket for this proposed action. The EPA has conditionally approved the CAA section 110(a)(2)(D)(i)(I) prong 4 visibility element for multiple NAAQS in the Georgia and South Carolina SIPs based on each state’s commitment to submit a CSAPR SIP revision. 81 FR 65899, 65900 (September 26, 2016). Continued
proposing withdrawal of the CSAPR FIP provisions for their EGUs based on the expectation that such withdrawal will be automatically accomplished as a result of SIP approval actions. Because Texas has not indicated an intent to submit a CSAPR SIP revision, the EPA is proceeding with this proposed action to withdraw the FIP requirements for Texas EGUs, consistent with the intended approach previously communicated to officials for all four states.

The EPA requests comment on the proposed withdrawal of the FIP provisions requiring Texas EGUs to participate in the CSAPR trading programs for SO2 and annual NOx, with regard to emissions occurring after 2016.

IV. Texas’ Good Neighbor Obligation With Regard to the 1997 Annual PM2.5 NAAQS

Withdrawal of the CSAPR FIP requirements as proposed in section III above would revive the need to consider Texas’ transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual PM2.5 NAAQS and to address any remaining obligation through other means. As summarized in section I above, the EPA proposes to determine that Texas would have no remaining transport obligation under this section with regard to this NAAQS following withdrawal of the FIP requirements, and consequently also proposes to determine that the EPA will have no obligation to issue new FIP requirements as to Texas’s transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual PM2.5 NAAQS after withdrawal of the current FIP requirements. This section discusses the rationale for these proposed determinations.

In the CSAPR rulemaking, one of the receptors that the EPA projected would have difficulty attaining and maintaining both the 1997 annual PM2.5 NAAQS and the 2006 24-hour PM2.5 NAAQS was a receptor located in Madison County, Illinois (monitor ID 171191007). The modeling for the CSAPR final rule showed that Texas was projected to contribute more than the threshold amount of PM2.5 pollution necessary in order to be considered “linked” to the Madison County receptor for annual PM2.5. Based on the linkage for the 1997 annual NAAQS, the EPA consequently determined emissions limitations for SO2 and annual NOx from Texas EGUs and promulgated FIP requirements reflecting these emission limitations. These are the FIP requirements that the EPA is now proposing to withdraw in order to address the D.C. Circuit’s remand of the Phase 2 SO2 budget for Texas.

In evaluating what, if any, remaining transport obligation Texas would have under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 PM2.5 NAAQS following withdrawal of the current FIP requirements as proposed, the EPA has reexamined data in the CSAPR final rule record in light of the D.C. Circuit’s other holdings in EME Homer City II, specifically the court’s rationale for removing several Phase 2 ozone-season NOx budgets. In the CSAPR rulemaking, for purposes of identifying receptors projected to have air quality problems and determining states that were linked to those receptors and which therefore may have transport obligations, the EPA used air quality projections for the year 2012, which was also the intended start year for implementation of the Phase 1 budgets. The CSAPR final rule record also contained air quality projections for 2014, which was the intended start year for implementation of the Phase 2 budgets. The 2014 modeling results showed that some ozone receptors projected to have air quality problems in 2012 would no longer be projected to have air quality problems in 2014 before considering the emission reductions from CSAPR, and petitioners argued that the EPA therefore lacked authority to establish Phase 2 ozone-season NOx emissions limitations for EGUs in states linked solely to those ozone receptors. The D.C. Circuit agreed and held the Phase 2 ozone-season NOx budgets for ten states invalid on that basis.

Although not discussed in the court’s decision, the CSAPR final rule record contains projections of 2014 air quality for the Madison County PM2.5 receptor that are analogous to the projections of 2014 air quality for the ozone receptors described above. Specifically, the 2014 modeling results projected that the Madison County receptor would have a maximum design value for annual PM2.5 of 15.02 micrograms per cubic meter (µg/m3) before considering the emissions reductions from CSAPR. This projected value is below the value of 15.05 µg/m3 that the EPA used to determine whether a particular PM2.5 receptor should be identified as having air quality problems that may trigger transport obligations in upwind states with regard to the 1997 annual PM2.5 NAAQS.

The Madison County receptor was the only PM2.5 receptor with projected air quality problems to which Texas was found to be linked, based on the EPA’s air quality modeling for the CSAPR final rule. Therefore, given that the Madison County receptor was projected to no longer have air quality problems sufficient to trigger transport obligations with regard to the 1997 annual PM2.5 NAAQS in the EPA’s 2014 base case modeling for the CSAPR final rule, and given the D.C. Circuit’s holding discussed above with regard to the Phase 2 ozone-season NOx budgets, the EPA proposes to find that, as of Phase 2 of CSAPR, Texas would not significantly contribute to nonattainment in, or interfere with maintenance by, any other state of the 1997 annual PM2.5 NAAQS following withdrawal of the current CSAPR FIP requirements applicable to Texas EGUs with regard to that NAAQS. Accordingly, the EPA also proposes to determine that the Agency has no obligation to issue new FIP requirements as to Texas under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual PM2.5 NAAQS after withdrawal of the current FIP provisions requiring Texas EGUs to participate in Phase 2 of the CSAPR federal trading programs for SO2 and annual NOx.

The EPA requests comment on the proposed determinations that Texas will no longer have any remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 PM2.5 NAAQS following finalization of the proposed withdrawal of the FIP provisions requiring Texas EGUs to participate in the SO2 and annual NOx trading programs during Phase 2 of CSAPR, and that the EPA accordingly will have no obligation to issue new FIP requirements for Texas sources to address such a transport obligation.
V. Sensitivity Analysis Regarding CSAPR Participation as a BART Alternative

As summarized in section II.B above, in 2012 the EPA amended the Regional Haze Rule to authorize states whose EGUs participate in CSAPR trading programs for a given pollutant to rely on CSAPR participation as a BART alternative for that pollutant, basing that determination on an analytic demonstration that implementation of CSAPR as expected to take effect at the time of the 2012 revision would achieve greater reasonable progress than BART toward the national goal of natural visibility conditions in Class I areas. This section discusses a sensitivity analysis to the 2012 analytic demonstration showing that the analysis would have supported the same conclusion if the actions the EPA has proposed to take or has already taken in response to the D.C. Circuit’s remand of various CSAPR Phase 2 budgets—specifically, the withdrawal of PM$_{2.5}$-related CSAPR Phase 2 FIP requirements for Texas EGUs proposed in this action and the recently finalized withdrawal of ozone-related CSAPR Phase 2 FIP requirements for Florida EGUs—were reflected in that analysis.

A. Summary of 2012 CSAPR-Better-Than-BART Analytic Demonstration

When promulgating the 2012 CSAPR-Better-than-BART rule, the EPA relied on an analysis showing that CSAPR implementation meets the Regional Haze Rule’s criteria for a demonstration of greater reasonable progress than BART toward natural visibility conditions as set forth in 40 CFR 51.308(e)(3).46 The analytic demonstration included an air quality modeling study whose results passed the two-pronged test described in section II.B above. The first prong ensures that the alternative program will not cause a decline in visibility at any affected Class I area. The second prong ensures that the alternative program results in improvements in average visibility across all affected Class I areas as compared to adopting source-specific BART. Together, these tests ensure that the alternative program provides for greater visibility improvement than would source-specific BART.

In the air quality modeling study conducted for the 2012 analytic demonstration, the EPA projected visibility conditions in affected Class I areas based on 2014 emissions projections for two control scenarios and used this modeling in conjunction with the 2014 base case emissions projections and air quality modeling from the CSAPR final rule record.48 One control scenario represents “Nationwide BART” and the other control scenario represents “CSAPR + BART-elsewhere.” The Nationwide BART scenario reflects projected SO$_2$ and NO$_x$ emissions from all EGUs nationwide (except Alaska and Hawaii) after the application of source-specific BART controls to all BART-eligible EGUs. In the CSAPR + BART-elsewhere scenario, EGU SO$_2$ and NO$_x$ emissions reductions attributable to CSAPR were applied throughout the 28-state CSAPR region wherever EGUs are subject to CSAPR requirements for the respective pollutants, and BART controls for SO$_2$ and NO$_x$ were applied to all BART-eligible EGUs outside the CSAPR region as well as to BART-eligible EGUs in the CSAPR region that are not subject to CSAPR requirements for the respective pollutants.49 The latter scenario reflects the fact that source-specific BART would remain a regional haze SIP element in states and for pollutants not covered by CSAPR requirements. In the base case, neither BART controls nor the EGU SO$_2$ and NO$_x$ emissions reductions attributable to CSAPR were reflected.

For all BART-eligible EGUs in the Nationwide BART scenario and for BART-eligible EGUs not subject to CSAPR for a particular pollutant in the CSAPR + BART-elsewhere scenario, the modeled emission rates were the presumptive EGU BART limits for SO$_2$ and NO$_x$ as filed in the BART Guidelines.50 Under this actual emission rate at a given unit with existing controls was lower, in which case the lower emission rate was modeled.51 The estimates of CSAPR annual NO$_x$ and SO$_2$ emissions from EGUs for the CSAPR + BART-elsewhere control scenario were based on the CSAPR Phase 2 budgets promulgated in the CSAPR final rule, except that proposed rather than final ozone-season NO$_x$ budgets were used for several states because their budgets were not final at the time the modeling for the CSAPR + BART-elsewhere scenario was performed.52

For the CSAPR-Better-than-BART rule, the EPA also conducted an additional sensitivity analysis to address instances where certain CSAPR budgets were increased after promulgation of the original CSAPR final rule.53 The overall magnitude of the SO$_2$ budget increases (for nine states) was 129,295 tons per year, with budget increases for Texas and Georgia accounting for approximately 70 percent of that total. In addition, there was an overall increase in annual NO$_x$ budgets (for thirteen states) of 49,818 tons per year. In the sensitivity analysis, the EPA noted the dominance of sulfate impacts on visibility for each control scenario and related noted that the vast majority of the projected visibility improvements in the CSAPR + BART-elsewhere scenario were attributable to the SO$_2$ reductions in that scenario, which were much larger than the SO$_2$ reductions in the Nationwide BART scenario.54 This was especially true in the sixteen Class I areas that were identified as being most impacted by Texas and Georgia SO$_2$ controls.

The EPA also concluded that the impact on the modeled visibility impacts at Class I areas from the overall NO$_x$ budget increases would be negligible. The EPA therefore focused the sensitivity analysis on the increases in the SO$_2$ budgets for Texas and Georgia and considered highly conservative assumptions for the air quality impacts.


48 For additional detail on the 2014 base case, see the CSAPR Final Rule Technical Support Document, supra note 44.

49 Specifically, because Arkansas, Florida, Louisiana, Mississippi, and Oklahoma were covered by CSAPR only to address ozone transport obligations, for the CSAPR + BART-elsewhere case, EGUs in these states were assumed to be subject to CSAPR requirements for ozone-season NO$_x$ emissions and source-specific BART for SO$_2$. For BART-eligible EGUs, the majority of the projected visibility improvements in the CSAPR + BART-elsewhere scenario were attributable to the SO$_2$ reductions in that scenario, which were much larger than the SO$_2$ reductions in the Nationwide BART scenario.54 This was especially true in the sixteen Class I areas that were identified as being most impacted by Texas and Georgia SO$_2$ controls.

50 Under this actual emission rate at a given unit with existing controls was lower, in which case the lower emission rate was modeled.51 The estimates of CSAPR annual NO$_x$ and SO$_2$ emissions from EGUs for the CSAPR + BART-elsewhere control scenario were based on the CSAPR Phase 2 budgets promulgated in the CSAPR final rule, except that proposed rather than final ozone-season NO$_x$ budgets were used for several states because their budgets were not final at the time the modeling for the CSAPR + BART-elsewhere scenario was performed.52

51 For more details on the emissions and modeling of the scenarios, see the 2011 CSAPR/BART Technical Support Document, supra note 46.

52 The use of proposed rather than final budgets for ozone-season NO$_x$ emissions for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin had no material effect on the overall emissions projections, because for each of the states except Oklahoma, the analysis also reflected a final, comparable stringent budget for annual NO$_x$ emissions, and while Oklahoma has no CSAPR budget for annual NO$_x$ emissions, its final Phase 2 ozone-season NO$_x$ budget was unchanged from the proposal.


54 Ed. at 1–2.
that would result from those budget increases in order to ensure that the conclusions from the modeling analysis remained robust in light of all the budget increases.

The CSAPR-Better-than-BART modeling analysis showed that the CSAPR + BART-elsewhere alternative passed both prongs of the two-pronged test described in section II.B above and that CSAPR implementation therefore met the Regional Haze Rule’s criteria for a BART alternative. The first prong of the test—i.e., whether the proposed BART alternative would result in a decline in visibility in any Class I area—was evaluated by comparing projected visibility conditions under the CSAPR + BART-elsewhere case and the base case. The CSAPR + BART-elsewhere scenario did not show visibility degradation relative to the base case at any of the affected Class I areas on either the 20 percent best or the 20 percent worst visibility days. The second prong of the test—i.e., whether the proposed BART alternative would result in an overall improvement in visibility across all affected Class I areas relative to BART—was evaluated by comparing projected visibility conditions under the CSAPR + BART-elsewhere case and the Nationwide BART case. The CSAPR + BART-elsewhere scenario passed this prong of the test based on the fact that, on average, modeled visibility improvement at the affected Class I areas was greater under the CSAPR + BART-elsewhere scenario than under the Nationwide BART scenario on both the 20 percent best and the 20 percent worst visibility days.

B. Impact on 2012 Analytic Demonstration of Actions Responding to the Remand of CSAPR Phase 2 Budgets

As discussed in section II.A above, although in EME Homer City II the D.C. Circuit remanded the CSAPR Phase 2 SO\textsubscript{2} budgets for four states and the CSAPR Phase 2 ozone-season NO\textsubscript{X} budgets for eleven states, the EPA expects that with regard to most of these states the remand will result in no material change to the scope of CSAPR coverage. In the case of the remanded Phase 2 SO\textsubscript{2} budgets for Alabama, Georgia, and South Carolina, the states are expected to continue to ensure that their EGUs comply with comparably stringent CSAPR SO\textsubscript{2} and annual NO\textsubscript{X} requirements through SIP revisions. In the case of the remanded Phase 2 ozone-season NO\textsubscript{X} budgets, eight of the states with remanded budgets (including Texas) will continue to be subject to CSAPR to address transport obligations with regard to the more stringent 2008 ozone NAAQS, and North Carolina and South Carolina, although no longer covered by CSAPR to address ozone transport obligations, will continue to be subject to CSAPR annual NO\textsubscript{X} requirements in order to address their PM\textsubscript{2.5} transport obligations. In considering the potential impact of the remand of Phase 2 budgets on the 2012 CSAPR-Better-than-BART analytic demonstration, the EPA therefore believes that only two changes have potential relevance: The withdrawal of the FIP provisions subjecting Florida EGUs to CSAPR ozone-season NO\textsubscript{X} requirements that has already been finalized, and the withdrawal of FIP provisions subjecting Texas EGUs to CSAPR SO\textsubscript{2} and annual NO\textsubscript{X} requirements that is proposed in this action.

With regard to the change in CSAPR requirements for Florida EGUs, the EPA believes that the change would have no material impact on the 2012 analytic demonstration. Because Florida EGUs are no longer subject to any CSAPR requirements for NO\textsubscript{X} emissions during Phase 2, Florida is no longer eligible to rely on CSAPR participation as a NO\textsubscript{X} BART alternative.\footnote{The EPA has already approved the incorporation into Florida’s SIP of determinations regarding source-specific NO\textsubscript{X} BART. 77 FR 71111, 71113–14 (November 29, 2012); 78 FR 53250, 53267 (August 29, 2013).} If this information had been available at the time of the 2012 CSAPR-Better-than-BART analytic demonstration, the treatment of Florida EGUs in the base case and in the Nationwide BART scenario would not have changed, but in the CSAPR + BART-elsewhere scenario Florida EGUs would have been treated as subject to NO\textsubscript{X} BART instead of being treated as subject to CSAPR ozone-season NO\textsubscript{X} requirements. The Nationwide BART scenario already includes projections of the annual NO\textsubscript{X} emissions from Florida EGUs under NO\textsubscript{X} BART. The difference between the projected annual NO\textsubscript{X} emissions of Florida EGUs in these two scenarios is only 5,300 tons, which represents an increase of approximately seven percent of the total annual NO\textsubscript{X} emissions from Florida EGUs and approximately three tenths of one percent of the total annual NO\textsubscript{X} emissions from EGUs in all modeled states in the CSAPR + BART-elsewhere scenario.\footnote{See the 2011 CSAPR/BART Technical Support Document, supra note 46, at table 2–3. The projected amounts of annual NO\textsubscript{X} emissions from Florida EGUs are 81,000 tons in the Nationwide BART scenario and 78,700 tons in the CSAPR + BART-elsewhere scenario. The difference between these amounts is 5,300 tons. The quotient of 5,300 divided by 81,000 is 6.5%. The total projected amount of annual NO\textsubscript{X} emissions from all states in the table in the CSAPR + BART-elsewhere scenario is 1,755,900 tons (1,217,500 + 538,400). The quotient of 5,300 divided by 1,755,900 is 0.3%.} Consistent with the

55 The EPA has already approved the

56 The EPA has already approved the

57 See 40 CFR 51.308(e)(4); see also supra note 7.
projected in the CSAPR + BART-elsewhere scenario. This can occur in CSAPR states that have numerous BART-eligible EGUs. In the case of Texas, the projected SO\textsubscript{2} emissions from affected EGUs in the modeled Nationwide BART scenario (139,300 tons per year) are considerably lower than the projected SO\textsubscript{2} emissions from the affected EGUs in the CSAPR + BART-elsewhere scenario (266,600 tons per year as modeled, and up to approximately 317,100 tons, as addressed in the 2012 CSAPR/BART sensitivity analysis memo).\textsuperscript{58} Treating Texas EGUs in the CSAPR + BART-elsewhere scenario as subject to SO\textsubscript{2} BART instead of CSAPR SO\textsubscript{2} requirements would therefore have reduced projected SO\textsubscript{2} emissions by between 127,300 tons and approximately 177,800 tons in this scenario, thereby improving projected air quality in this scenario relative to projected air quality in both the Nationwide BART scenario and the base case scenario (in which the projected SO\textsubscript{2} emissions from Texas EGUs would not change).\textsuperscript{59} At the lower end of this range, a reduction in SO\textsubscript{2} emissions of 127,300 tons would represent a reduction of over four percent of the total SO\textsubscript{2} emissions from EGUs in all modeled states in the CSAPR + BART-elsewhere scenario.\textsuperscript{60} The EPA has previously observed that the visibility improvements from CSAPR relative to BART are primarily attributable to the greater reductions in SO\textsubscript{2} emissions from CSAPR across the overall modeled region in the CSAPR + BART-elsewhere scenario relative to the Nationwide BART scenario.\textsuperscript{61} In the 2012 CSAPR-Better-than-BART analytic demonstration as relied on for purposes of the CSAPR-Better-than-BART rule, in which Texas SO\textsubscript{2} emissions for the CSAPR + BART-elsewhere scenario were represented at their higher projected CSAPR levels instead of at their lower projected BART levels, the difference in SO\textsubscript{2} emission reductions for the overall modeled region between the CSAPR + BART-elsewhere scenario and the Nationwide BART scenario was approximately 773,000 tons after accounting for the increases in CSAPR SO\textsubscript{2} budgets promulgated after the CSAPR final rule.\textsuperscript{62} An additional SO\textsubscript{2} reduction of 127,300 tons or more in the CSAPR + BART-elsewhere scenario—the result of revising this scenario to represent Texas EGUs as subject to SO\textsubscript{2} BART requirements instead of CSAPR SO\textsubscript{2} requirements—would increase this 773,000 ton differential, which already favors implementation of CSAPR relative to BART, by more than fifteen percent.

The modeling performed for the 2012 analytic demonstration does not include projections of NO\textsubscript{X} emissions from Texas EGUs in a scenario where the EGUs are assumed to be subject to CSAPR requirements for ozone-season NO\textsubscript{X} but not annual NO\textsubscript{X} emissions. However, in the base case used for the analytic demonstration—i.e., without any NO\textsubscript{X} requirements from either CSAPR or BART—the projected annual NO\textsubscript{X} emissions from Texas EGUs were only 2,600 tons higher than the annual NO\textsubscript{X} emissions projected for the CSAPR + BART-elsewhere case in which it was assumed that the EGUs were subject to CSAPR requirements for both ozone-season and annual NO\textsubscript{X} emissions.\textsuperscript{63} The EPA believes this information indicates that if Texas EGUs had been modeled as subject to CSAPR requirements for ozone-season NO\textsubscript{X} but not annual NO\textsubscript{X} emissions, the projected NO\textsubscript{X} emissions would likely have been at most a few thousand tons per year higher than the emissions already modeled in the CSAPR + BART-elsewhere scenario. An increase of 2,600 tons—that is, the full difference between the projected annual NO\textsubscript{X} emissions from Texas EGUs under the CSAPR + BART-elsewhere scenario and a case with no CSAPR (or BART) NO\textsubscript{X} requirements at all—would represent approximately two percent of the total annual NO\textsubscript{X} emissions from Texas EGUs and less than ten tenths of one percent of the total annual NO\textsubscript{X} emissions from EGUs in all modeled states in the CSAPR + BART-elsewhere scenario.\textsuperscript{64} Consistent with the sensitivity analysis supporting the 2012 analytic demonstration that showed the dominance of sulfate impacts on visibility (especially in the South), small increases in Texas NO\textsubscript{X} emissions are expected to have a negligible impact on visibility impairment in nearby Class I areas. The EPA believes that this relatively small increase in NO\textsubscript{X} emissions in the CSAPR + BART-elsewhere case would have been too small to cause any change in the results of either prong of the two-pronged CSAPR-Better-than-BART test.

In summary, if the information regarding the remanded CSAPR Phase 2 SO\textsubscript{2} budget for Texas and the consequent proposed withdrawal of FIP requirements for Texas EGUs had been available at the time of the 2012 CSAPR-Better-than-BART analytic demonstration, the EPA believes that the CSAPR + BART-elsewhere scenario likely would have reflected SO\textsubscript{2} emissions from Texas EGUs that would have been 127,300 or more tons per year lower than the emissions that were used instead, and likely would have reflected annual NO\textsubscript{X} emissions from Texas EGUs that would have been at most a few thousand tons per year higher than the emissions that were used instead. Given the greater importance of SO\textsubscript{2} emissions relative to NO\textsubscript{X} emissions in the 2012 analytic comparison, as noted above, and given that emissions would not have changed in the Nationwide BART or base case scenarios, it is a logical conclusion that the modeled visibility improvement in the CSAPR + BART-elsewhere scenario would have been even larger relative to the other scenarios than what was modeled in the 2012 analytic demonstration as reflected in the CSAPR-Better-than-BART rule. There is therefore no need to do any new modeling or more complicated sensitivity analysis. The lower SO\textsubscript{2} emissions in Texas would clearly have led to more visibility improvement on the best and worst visibility days in the nearby Class I areas.\textsuperscript{65} Since the “original” CSAPR + BART-elsewhere scenario passed both prongs of the better-than-BART test (compared to the

\textsuperscript{58} For the projected annual SO\textsubscript{2} emissions from Texas EGUs for all scenarios, see the 2011 CSAPR/BART Technical Support Document, supra note 46, at table 2–4. As discussed in section V.A above, certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo, supra note 53). The increase in the Texas SO\textsubscript{2} budget was 50,517 tons which, when added to the Texas SO\textsubscript{2} emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO\textsubscript{2} emissions from Texas EGUs of approximately 317,100 tons.

\textsuperscript{59} The difference between 266,600 and 139,300 is 127,300. The difference between 317,100 and 139,300 is 177,800.

\textsuperscript{60} The total projected amount of annual SO\textsubscript{2} emissions from all states in the table in the CSAPR + BART-elsewhere scenario is 2,918,500 tons (2,416,900 + 501,600). See the 2011 CSAPR/BART Technical Support Document, supra note 46, at table 2–4. The quotient of 127,300 divided by 2,918,500 is 4.3%.

\textsuperscript{61} See the 2012 CSAPR/BART sensitivity analysis memo, supra note 53, at 1–2.

\textsuperscript{62} Id.

\textsuperscript{63} See the 2011 CSAPR/BART Technical Support Document, supra note 46, at table 2–5. The projected amounts of annual NO\textsubscript{X} emissions from Texas EGUs are 142,100 tons in the base case scenario and 139,500 tons in the CSAPR + BART-elsewhere scenario. The difference between these amounts is 2,600 tons.

\textsuperscript{64} The quotient of 2,600 divided by 139,500 is 1.9%. The total projected amount of annual NO\textsubscript{X} emissions from all states in the CSAPR + BART-elsewhere scenario is 1,755,900 tons. See supra note 56. The quotient of 2,600 divided by 1,755,900 is 0.15%.

\textsuperscript{65} As documented in the 2012 CSAPR/BART sensitivity analysis memo, supra note 53, sulfate is the main constituent contributing to visibility impairment at the Class I areas affected by Texas’ emissions, making Texas’ SO\textsubscript{2} emissions the dominant contributor to visibility impairment in these areas.
Nationwide BART scenario and the base case scenario), a modified CSAPR + BART-elsewhere scenario without Texas in the CSAPR region would without question also have passed both prongs of the better-than-BART test. In fact, if the modeling analysis had reflected the withdrawal of FIP provisions for Texas EGUs proposed in this action, the EPA expects that CSAPR implementation would have passed the better-than-BART test even more easily, again supporting the use of CSAPR implementation as a BART alternative for all states whose EGUs participate in the CSAPR trading programs.

The EPA requests comment on this discussion and the sensitivity analysis showing that the 2012 analytic demonstration supporting the conclusion that CSAPR participation qualifies as a BART alternative would not be adversely affected by modifying the assumptions to reflect the actions that have been or are expected to be taken in response to the D.C. Circuit’s remand of CSAPR Phase 2 budgets, including the proposed withdrawal of FIP provisions requiring Texas EGUs to participate in the CSAPR SOx and annual NOx trading programs.

VI. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. The withdrawal of the FIP provisions proposed in this action will eliminate monitoring, recordkeeping, and reporting requirements for Texas sources under the CSAPR SO2 Group 2 Trading Program and the CSAPR NOx Annual Trading Program. However, this action will cause no material change in information collection burden related to NOx because all of the sources will continue to be subject to very similar NOx monitoring and reporting requirements under the CSAPR NOx Ozone Season Group 2 Trading Program and/or the Acid Rain Program. Further, for most of the sources, this action will also cause no change in information collection burden related to SO2 because the same SO2 monitoring and reporting requirements will continue to apply to the sources under the Acid Rain Program. Approximately eight Texas sources currently reporting under CSAPR include units that are not subject to the Acid Rain Program and therefore will no longer be required to continuously monitor and report SO2 emissions to the EPA, but these units combust only gaseous or liquid fuels and currently use default values or periodic sampling instead of continuous emission monitoring systems to measure SO2 concentrations. Consequently, the EPA expects this action to cause little change in information collection burden related to SO2.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action withdraws existing regulatory requirements for some entities and does not impose new requirements on any entity. We have therefore concluded that this action will either relieve or have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48206, 48346 (August 8, 2011).

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

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

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

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply eliminates certain federal regulatory requirements that the
D.C. Circuit has held invalid. Consistent with Executive Order 12898 and the EPA’s environmental justice policies, the EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347–52 (August 8, 2011).

List of Subjects in 40 CFR Part 52

Environmental protection.

Administrative practice and procedure.

Air pollution control.

Incorporation by reference.

Intergovernmental relations.

Nitrogen oxides.

Ozone.

Particulate matter.

Regional haze.

Reporting and recordkeeping requirements.

Sulfur dioxide.


Gina McCarthy, Administrator.

For the reasons stated in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

§ 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) * * *

(ii) The provisions of subpart AAAA 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. * * * * *

(4) Notwithstanding the provisions of paragraph (a)(1) of this section, 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 revising subpart AAAA of part 97 of this chapter as follows and not making any other substantive revisions of that subpart: * * * * *

(5) Notwithstanding the provisions of paragraph (a)(1) of this section, 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 (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NOx Annual Trading Program set forth in §§ 97.402 through 97.435 of this chapter, except that the SIP revision: * * * * *

(6) 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, the provisions of paragraph (a)(2)(i) of this section will no longer apply to sources in the State, unless the Administrator’s approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, 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. * * * * *

§ 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) * * *

(c)(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, 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. * * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations revising subpart DDDDD of part 97 of this chapter as follows and not making any other substantive revisions of that subpart: * * * * *

(i) Notwithstanding the provisions of paragraph (a) of this section, 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 (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NOx Group 2 Trading Program set forth in §§ 97.702 through 97.735 of this chapter, except that the SIP revision: * * * * *

(j) 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), and (g) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator’s approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, 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.
occurring in 2015 and 2016.

§ 52.2283 Interstate pollutant transport provisions: What are the FIP requirements for decreases in emissions of nitrogen oxides?

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO\textsubscript{X} Annual Trading Program in subpart AAAAA of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) [Reserved]

§ 52.2284 Interstate pollutant transport provisions: What are the FIP requirements for decreases in emissions of sulfur dioxide?

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR SO\textsubscript{2} Group 2 Trading Program in subpart DDDDD of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) [Reserved]