ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2018–0595; FRL–9984–19–OAR]

RIN 2060–AU08

Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update the regulations that were originally promulgated in 1998 to implement the NO_X SIP Call. In place of the current requirement for states to include provisions in their state implementation plans (SIPs) under which certain emissions sources must monitor their mass emissions of nitrogen oxides (NO_X) according to 40 CFR part 75, the proposed amendments would allow states to include alternate forms of monitoring requirements in their SIPs. The amendments would also rescind the findings of interstate pollution transport obligations with respect to the 1997 8-hour ozone national ambient air quality standards (NAAQS) under the NO_X SIP Call that have been stayed by EPA since 2000. Other revisions would remove additional obsolete provisions and clarify the remaining regulations but would not substantively alter any current regulatory requirements.

DATES: Comments must be received on or before October 29, 2018. To request a public hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 4, 2018. EPA does not plan to conduct a public hearing unless requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0595, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* 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. 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 *https://www.epa.gov/dockets.* Additional materials related to this proposed action, including submitted comments, can be viewed online at *regulations.gov* under Docket ID No. EPA–HQ–OAR–2018–0595 or in person at the EPA Docket Center Reading Room in Washington, DC. Information on the location and hours of the EPA Docket Center Reading Room is available at *https://www.epa.gov/dockets.*

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SUPPLEMENTARY INFORMATION:

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I. Overview of the Proposed Action

This section provides an overview of the proposed action, including a summary of the proposed amendments and their projected impacts as well as information concerning potentially affected entities, statutory authority, EPA's proposed determinations concerning applicable rulemaking and judicial review provisions, and the proposed effective date.

Section II provides additional background. In section III, EPA describes the proposed amendments and the supporting rationales. Section IV discusses the projected impacts of the proposed amendments. EPA's request for comment is in section V. Section VI addresses reviews required under various statutes and Executive Orders.

A. Summary of Proposed Amendments and Projected Impacts

In 1998, EPA promulgated the NO_X SIP Call which, as implemented, required 20 states and the District of Columbia to revise their SIPs to reduce seasonal NO_X emissions contributing to interstate ozone pollution. Since implementation of emission controls under the NO_X SIP Call began in 2003, the regulations have required these jurisdictions to include provisions in their SIPs under which certain large electricity generating units (EGUs) and large non-EGU boilers and turbines must monitor their seasonal NO_X emissions according to the procedures in 40 CFR part 75. The sources formerly met these requirements through participation in the NO_X Budget Trading Program (NBTP), which was discontinued after 2008. Almost all the affected large EGUs currently participate in the Acid Rain Program or Cross-State Air Pollution Rule (CSAPR) trading programs, which have comparable monitoring requirements, but few of the affected large non-EGUs participate in these other programs. Over time, many of the originally affected large non-EGUs have retired or switched to cleaner fuels, and newly affected large non-EGUs generally have lower emission rates, so total NO_X emissions from the group are considerably lower than in the

past. Several NO_X SIP Call states have expressed interest in establishing alternate, potentially lower-cost monitoring requirements for the remaining large non-EGUs.

This proposal would revise the existing NO_X SIP Call regulations to allow states to amend their SIPs to establish emissions monitoring requirements for NO_X SIP Call purposes other than Part 75 monitoring requirements. Ultimately, such alternate monitoring requirements could be made available to approximately 310 units—mostly large non-EGUs—through states' revisions to their SIPs. States, not EPA, would decide whether to revise the monitoring requirements in their SIPs, and EPA lacks complete information on the remaining monitoring requirements that the sources would face, but EPA expects that at least some states would revise their SIPs, resulting in reduced monitoring costs for at least some sources. Almost all the large EGUs would still be required to perform NO_X monitoring according to 40 CFR part 75 under the Acid Rain Program or the CSAPR trading programs, thereby providing comparable monitoring data for most of the collective NO_X mass emissions from the set of large EGUs and large non-EGU boilers and turbines affected under the NO_X SIP Call. Further, the monitoring data for recent years show that the sets of large EGUs and large non-EGU boilers and turbines in all NO_X SIP Call states are collectively complying with the portions of the statewide emissions budgets assigned to these types of sources by substantial margins. Given these circumstances, EPA believes that other forms of monitoring for the remaining large EGUs (*i.e.,* those not covered under the Acid Rain Program or the CSAPR trading programs) and large non-EGU boilers and turbines can now provide sufficient assurance that the NO_X SIP Call's required emissions reductions will continue to be achieved.

EPA is also proposing to eliminate several obsolete provisions that no longer have any substantive effect on the regulatory requirements faced by states or sources. For example, the NO_X SIP Call originally rested independently on parallel findings regarding interstate ozone pollution that EPA made with respect to two distinct NAAQS: The 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. The findings made with respect to the 1997 ozone NAAQS were stayed by EPA in 2000 and have since been superseded by findings made in more recent actions based on updated analyses. In this action, EPA is proposing to rescind the indefinitely stayed findings made in the NO_X SIP Call with respect to the 1997 ozone NAAQS. EPA is also proposing to remove obsolete provisions concerning options to revise the NO_X SIP Call emissions budgets and baseline emissions inventories, options to issue credits supplementing the emissions budgets, and options to comply with the emissions budgets by using the NBTP or state-developed interstate trading programs. An obsolete provision concerning SIP submission procedures would also be removed.

Finally, EPA is proposing to make clarifying amendments to the remaining NO_X SIP Call regulations. Most notably, existing regulatory text mischaracterizing the incremental emissions reductions required in states' Phase II SIP submissions as ''Phase II incremental budget'' amounts and ''portions of'' the final NO_X budgets would be replaced by simpler text referencing the Phase I and final NO_X budgets. The proposed clarifications would not substantively alter any existing regulatory requirements.

No substantive amendments are proposed to any existing requirements of the NO_X SIP Call except the existing requirement for SIPs to include provisions under which large EGUs and large non-EGU boilers and turbines must monitor their NO_X emissions in accordance with 40 CFR part 75. The emissions reductions achieved by the NO_X SIP Call have been relied on to support numerous final actions redesignating areas to attainment of a NAAQS, and consistent with that reliance the emissions reductions must be permanent and enforceable. To ensure the permanence and enforceability of the emissions reductions, other existing NO_X SIP Call requirements regarding large EGUs and large non-EGU boilers and turbines, including requirements for SIPs to contain provisions establishing some form of enforceable seasonal NO_X mass emissions limits for these sources supported by some form of monitoring requirements, are not affected by the proposed amendments and would remain in place, as would all of the more broadly applicable requirements regarding SIPs and the statewide emissions budgets. EPA is not reopening, and thus is not accepting comment on, any of the NO_X SIP Call provisions other than the ones proposed for revision. With respect to the NO_X SIP Call provisions proposed for revision other than the provision concerning Part 75 monitoring requirements, EPA is not reopening any of the provisions on a substantive basis and is accepting comment solely on whether the provisions proposed for removal as obsolete in fact are obsolete and on whether the proposed clarifications in fact achieve clarification.

EPA is not proposing to amend any other regulations under which some sources affected under the NO_X SIP Call may also face monitoring requirements. Such other regulations include, but are not limited to, regulations for the Acid Rain Program (40 CFR parts 72 through 78) and the CSAPR trading programs (40 CFR part 97, subparts AAAAA through EEEEE). EPA is not reopening, and thus is not accepting comment on, any such other regulations.

B. Potentially Affected Entities

This proposed action would not apply directly to any emissions sources but instead would amend existing regulatory requirements applicable to the SIPs of Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. If an affected jurisdiction chooses to revise its SIP in response to these amendments, sources in the jurisdiction could be indirectly affected if they are subject to emissions monitoring requirements for purposes of the NO_X SIP Call and are not independently subject to comparable requirements under another program such as the Acid Rain Program or a CSAPR trading program. Generally, the types of sources that could be affected are fossil fuel-fired boilers and stationary combustion turbines with heat input capacities over 250 million British thermal units per hour (mmBtu/hr) or serving electricity generators with capacities over 25 megawatts (MW). Sources meeting these criteria operate in a variety of industries, including but not limited to the following:

NAICS * code	Examples of industries with potentially affected sources
221112 ...	Fossil fuel-fired electric power generation.
3112	Grain and oilseed milling.
3221	Pulp, paper, and paperboard mills.
3241	Petroleum and coal products manufacturing.
3251	Basic chemical manufacturing.
3311	Iron and steel mills and ferroalloy manufacturing.
6113	Colleges, universities, and professional schools.

* North American Industry Classification System.

C. Statutory Authority and Proposed Determinations Concerning Rulemaking Procedures and Judicial Review

Statutory authority for the amendments proposed in this action is provided by Clean Air Act (CAA) sections 110 and 301, 42 U.S.C. 7410 and 7601, which also provided statutory authority for issuance of the existing NO_X SIP Call regulations that EPA is proposing to amend.

CAA section 307(d), 42 U.S.C. 7607(d), contains rulemaking and judicial review provisions that apply to certain EPA actions under the CAA including, under section 307(d)(1)(V), ''such other actions as the Administrator may determine.'' In accordance with section 307(d)(1)(V), the Administrator proposes to determine that the provisions of section 307(d) apply to any final action taken on this proposal. EPA has complied with the procedural requirements of section 307(d) during the course of this rulemaking.

CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), indicates which United States Courts of Appeals have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) if (i) the Agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) the action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' EPA proposes to find that any final action taken on this proposal is ''nationally applicable'' or, in the alternative, is based on a determination of ''nationwide scope and effect'' within the meaning of section 307(b)(1). The proposed rule would amend existing regulations that apply to 20 states and the District of Columbia, and thus the proposed rule would apply to the same jurisdictions. The existing regulations that would be amended were promulgated to address interstate transport of air pollution across the eastern half of the nation and have been relied on as a basis for actions redesignating areas in at least 20 states to attainment with one or more NAAQS. Previous final actions promulgating and amending the existing regulations were nationally applicable and reviewed in the D.C. Circuit,[1] and courts have found other similar actions to be nationally applicable.[2] Finally, the jurisdictions to which the proposed rule would apply are located in nine federal judicial circuits, and in the report on the 1977 CAA Amendments that revised section 307(b)(1), Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit.[3] For these reasons, the Administrator proposes to determine that any final action related to the proposed rule is nationally applicable or, in the alternative, is based on a determination of nationwide scope and effect for purposes of section 307(b)(1).

D. Proposed Effective Date

If the amendments proposed in this action are finalized, EPA intends to make them effective immediately upon publication of a final action in the **Federal Register**. EPA expects that any final action would not be subject to requirements specifying a minimum period between publication and effectiveness under either Congressional Review Act (CRA) section 801(a)(3), 5 U.S.C. 801(a)(3), or Administrative Procedure Act (APA) section 553(d), 5 U.S.C. 553(d).

CRA section 801(a)(3) generally prohibits a ''major rule'' from taking effect earlier than 60 days after the rule is published in the **Federal Register**. Generally, under CRA section 804(2), 5 U.S.C. 804(2), a major rule is a rule that the Office of Management and Budget (OMB) finds has resulted in or is likely to result in (1) an annual effect on the economy of $100 million or more, (2) major cost or price increases, or (3) other significant adverse economic effects. EPA expects that any final rule issued based on this proposal would not be a major rule for CRA purposes.

As discussed in section I.C., EPA is proposing to issue the amendments under CAA section 307(d). This provision does not include requirements governing the effective date of a rule promulgated under it and, accordingly, EPA has discretion in establishing the effective date. While APA section 553(d) generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**, CAA section 307(d)(1) clarifies that ''[t]he provisions of [APA] section 553 . . . shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, APA section 553(d) would not apply to the amendments. Nevertheless, in proposing to make any final action taken on this proposal effective immediately upon publication, EPA has considered the purposes underlying APA section 553(d). The primary purpose of the prescribed 30-day waiting period is to give affected parties a reasonable time to adjust their behavior and prepare before a final rule takes effect. The amendments proposed in this action would not impose any new regulatory requirements and therefore would not necessitate time for affected sources to adjust their behavior or otherwise prepare for implementation. Further, APA section 553(d) expressly allows an effective date earlier than 30 days after publication for a rule that ''grants or recognizes an exemption or relieves a restriction.'' This proposal would relieve an existing restriction and allow EPA to approve SIPs with more flexible monitoring requirements, which in turn could lead to reduced monitoring costs for certain sources. Consequently, making the amendments effective immediately upon publication of a final action would be consistent with the purposes of APA section 553(d).

II. Background

This section provides background on the NO_X SIP Call, the NO_X Budget Trading Program (NBTP) and its successor trading programs, and EPA's and states' reliance on the resulting emissions reductions to support redesignations of areas to attainment of the NAAQS.

A. The NO_X SIP Call

Under the CAA, EPA establishes and periodically revises NAAQS for certain pollutants, including ground-level ozone, while states have primary responsibility for attaining the NAAQS through the adoption of control measures in their SIPs. Under CAA section 110(a)(2)(D)(i)(I), 42 U.S.C. 7410(a)(2)(D)(i)(I), often called the ''good neighbor provision,'' each state is required to include provisions in its SIP prohibiting emissions that ''will . . .

[1] The U.S. Court of Appeals for the Fourth Circuit transferred a challenge to one of these actions to the D.C. Circuit after determining that the action was nationally applicable. *See W. Va. Chamber of Commerce* v. *Browner,* No. 98–1013, 1998 U.S. App. LEXIS 30621, at *24 (4th Cir. Dec. 1, 1998) (finding the NO_X SIP Call to be nationally applicable based on ''the nationwide scope and interdependent nature of the problem, the large number of states, spanning most of the country, being regulated, the common core of knowledge and analysis involved in formulating the rule, and the common legal interpretation advanced of section 110 of the Clean Air Act'').

[2] *See, e.g., Texas* v. *EPA,* No. 10–60961, 2011 U.S. App. LEXIS 5654 (5th Cir. Feb. 24, 2011) (finding a SIP call to 13 states to be nationally applicable and thus transferring the case to the D.C. Circuit in accordance with CAA section 307(b)(1)). *Cf.* Judgment, *Cedar Falls Utils.* v. *EPA,* No. 16–4504 (8th Cir. Feb. 22, 2017) (transferring a petition to review the CSAPR Update to the D.C. Circuit).

[3] H.R. Rep. No. 95–294, at 323–24 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1402–03.

contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' In 1998, EPA issued the NO_X SIP Call (the Rule) identifying good neighbor obligations with respect to the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS and calling for SIP revisions to address those obligations.[4] As originally promulgated and codified at 40 CFR 51.121 and 51.122, the Rule required 22 states [5] and the District of Columbia [6] to revise their SIPs to reduce their sources' emissions of NO_X, an ozone precursor, during the May-September ''ozone season.'' The original deadline for implementation of controls to accomplish the required emissions reductions was May 1, 2003.

In the NO_X SIP Call rulemaking, EPA developed and applied a 4-step framework that has since formed the basis for all subsequent EPA rulemakings to address the good neighbor provision. The four steps are to: (1) Identify areas that are projected to have problems attaining or maintaining the NAAQS; (2) identify upwind states whose emissions warrant further analysis because of linkages to problematic air quality in downwind areas in other states; (3) determine the amounts of emissions that linked upwind states must eliminate (if any) to meet their good neighbor obligations, considering both air quality and cost factors; and (4) implement the required emissions reductions through enforceable control measures. For purposes of this proposed action, only the third and fourth of these four steps—determination of the amounts of required emissions reductions and implementation of the required reductions—merit discussion.[7]

Based on analysis of both air quality and cost factors, as noted above, EPA determined in the NO_X SIP Call rulemaking that the amount of each state's required emissions reduction under the Rule should be the portion of the state's projected 2007 emissions inventory [8] that could be eliminated through the application of highly cost-effective controls. The 2007 emissions inventories spanned the full range of economic sectors, including EGU and non-EGU stationary point sources, smaller stationary (area) sources, and highway and nonroad mobile sources. After evaluating potential emission control opportunities across both stationary and mobile sectors, EPA identified sufficiently cost-effective control opportunities and quantified the resulting potential emissions reductions for four categories of fossil fuel-fired combustion devices: EGU boilers and turbines serving electricity generators with capacity ratings greater than 25 MW (large EGUs); non-EGU boilers and turbines with heat input ratings greater than 250 mmBtu/hr (large non-EGU boilers and turbines); stationary internal combustion engines; and cement kilns. In aggregate across all covered states, large EGUs accounted for approximately 83 percent of the total quantified potential emissions reductions, and the other three categories collectively accounted for approximately 17 percent.[9]

To implement the Rule's emissions reduction requirements, EPA promulgated a ''budget'' for the statewide seasonal NO_X emissions from each covered state. Each state's emissions budget was calculated as the state's projected 2007 emissions inventory minus the state's required emissions reduction. Notwithstanding EPA's own conclusions concerning the types of sources for which highly cost-effective controls were available, the Rule did not mandate that states follow any particular approach for achieving their required emissions reductions. Instead, states retained wide discretion regarding which sources in their states to control and what control measures to employ. Each state was simply required to demonstrate that whatever control measures it chose to include in its SIP revision would be sufficient to ensure that projected 2007 statewide seasonal NO_X emissions from its sources would not exceed its emissions budget.

Besides the general flexibility given to states regarding the choices of sources and control measures, the NO_X SIP Call included additional provisions designed to increase compliance flexibility. First, the Rule established a compliance supplement pool of additional credits beyond the emissions budgets. States could issue credits from the pool according to criteria established in the Rule, and sources could use the credits to demonstrate compliance during the first two years in which emission controls were required. Second, the Rule allowed states to adopt interstate emission allowance trading programs as control measures to accomplish some or all of the required emissions reductions. EPA also provided a model rule for an EPA-administered interstate trading program—the NBTP—that would meet all the Rule's SIP approval criteria for a trading program for large EGUs and large non-EGU boilers and turbines.

While generally oriented toward providing states and sources with compliance flexibility, the NO_X SIP Call also included two conditional provisions that would become mandatory SIP requirements for large EGUs and large non-EGU boilers and turbines if states chose to include any emission control measures for these types of sources in their SIP revisions. First, under § 51.121(f)(2), any control measures imposed on these types of sources would be required to include enforceable limits on the sources' seasonal NO_X mass emissions. These limits could take several forms, including either limits on individual sources or collective limits on the group of all such sources in a state. Second, under § 51.121(i)(4), these sources would be required to monitor and report their seasonal NO_X mass emissions according to the provisions of 40 CFR part 75.[10] One way a state could meet these two SIP requirements was to adopt the NBTP, because the NBTP included provisions addressing both requirements and was expressly designed as a potential control measure for these types of sources. However, it is important to recognize that the mandatory SIP requirements for large EGUs and large non-EGU boilers and turbines, once triggered by a state's choice to adopt *any* control measures for these types of sources into its SIP, exist independently of the NBTP. The mandatory SIP requirements therefore

[4] Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (NO_X SIP Call), 63 FR 57356 (Oct. 27, 1998).

[5] In addition to the jurisdictions currently subject to requirements under the NO_X SIP Call as amended, the Rule as originally issued also applied to Georgia and Wisconsin.

[6] For simplicity, this document often refers to all the jurisdictions with obligations under the CAA and the NO_X SIP Call, including the District of Columbia, as ''states.''

[7] The following paragraphs summarize relevant background information from the more detailed description of the rulemaking process in the preamble for the final Rule at 63 FR 57405–76.

[8] The NO_X SIP Call rulemaking made extensive use of 2007 emissions inventory information and air quality modeling results developed through the 1995–1997 Ozone Transport Assessment Group (OTAG) process, a collaborative effort of states, industry, environmental organizations, and EPA to analyze the causes of transported ozone pollution throughout the eastern United States and assess possible mitigation strategies.

[9] Out of the Rule's total quantified potential emissions reductions of 1,156,638 tons, EPA quantified potential emissions reductions from EGUs and non-EGUs of 957,975 tons and 198,663 tons, respectively. *See* 63 FR at 57434, 57436, and 57440 (differences between ''Base'' and ''Budget'' totals in Tables III–5, III–7, and III–11).

[10] For brevity, this notice generally refers to the monitoring, recordkeeping, and reporting requirements in 40 CFR part 75 as ''Part 75 monitoring requirements.''

were not eliminated by the later discontinuation of the NBTP.

Following initial promulgation, EPA amended the NO_X SIP Call several times. One amendment in 2000 was prompted by a D.C. Circuit opinion concerning the 1997 8-hour ozone NAAQS.[11] The court's decision created uncertainty concerning EPA's authority to implement this NAAQS, and in response EPA indefinitely stayed the findings of good neighbor obligations under this NAAQS as a basis for the Rule pending resolution of the uncertainty.[12] Because all the Rule's requirements rested independently on the findings of good neighbor obligations under the 1979 1-hour ozone NAAQS, the stay—which remains in place—had no consequence for the Rule's implementation.

Between 1998 and 2004, EPA made several other amendments to reflect updated information and to respond to other D.C. Circuit opinions and orders concerning the NO_X SIP Call itself.[13] Collectively, these amendments (1) eliminated emissions reduction requirements for Wisconsin and portions of Alabama, Georgia, Michigan, and Missouri; (2) modified definitions used to classify certain units as EGUs or non-EGUs; (3) revised the projected 2007 emissions inventories and the emissions budgets; (4) accommodated court-imposed deferrals of the Rule's original deadlines for SIP submissions and implementation of emission controls; and (5) divided the Rule's overall emissions reduction requirements into two phases, with implementation of the first and second phases of reductions required by May 31, 2004 and May 1, 2007, respectively.[14] In an additional pair of amendments in 2005 and 2008, EPA first stayed and then eliminated emissions reduction requirements for the remaining portion of Georgia.[15]

As amended, the NO_X SIP Call applies to Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia; portions of Alabama, Michigan, and Missouri; and the District of Columbia. All these jurisdictions except Missouri adopted the NBTP for large EGUs and large non-EGU boilers and turbines as part of their Phase I SIP submissions. Missouri, which was not required to make a Phase I SIP submission, adopted the NBTP for the same types of sources as part of its Phase II SIP submission. By adopting control measures applicable to large EGUs and large non-EGU boilers and turbines into their SIPs, all the affected jurisdictions triggered obligations for their SIPs to include enforceable mass emissions limits and Part 75 monitoring requirements for these types of sources. As noted above, these requirements remain in effect despite the later discontinuation of the NBTP.[16]

B. The NO_X Budget Trading Program (NBTP) and Related Trading Programs

As described in section II.A., EPA developed the NBTP as a potential control measure for large EGUs and large non-EGU boilers and turbines that states could adopt into their SIPs to achieve some or all of the emissions reductions required under the NO_X SIP Call, and all covered states chose to adopt the program into their SIPs as a control measure for these types of sources. To provide further context for the amendments to the NO_X SIP Call proposed in this action, this section briefly discusses the relationships and relevant differences between the NBTP and several other interstate emission allowance trading programs that have preceded or followed it.

The NBTP was implemented starting in 2003, succeeding a similar but geographically narrower interstate trading program called the Ozone Transport Commission (OTC) NO_X Budget Program. The OTC trading program, which was developed by several northeastern states with EPA assistance, operated from 1999 through 2002. Like the NBTP, it applied to both large EGUs and large non-EGU boilers and turbines. After issuance of the NO_X SIP Call, the northeastern states elected to replace the OTC trading program with the NBTP starting in 2003, approximately one year before the NO_X SIP Call's amended deadline for implementation of Phase I emission controls. In 2004, the NBTP expanded to include sources in most of the remaining NO_X SIP Call states. Missouri sources joined the NBTP in 2007, and EPA continued to administer the NBTP through the 2008 ozone season.

Since the 2008 ozone season, EPA has replaced the NBTP with a series of three similar interstate emission allowance trading programs designed to address eastern states' good neighbor obligations with respect to ozone NAAQS more recent than the 1979 1-hour ozone NAAQS that underlies the NO_X SIP Call as amended. The NBTP's three successor seasonal NO_X trading programs were established under the Clean Air Interstate Rule (CAIR),[17] which was remanded by the D.C. Circuit; [18] the original CSAPR,[19] which replaced CAIR; and most recently the CSAPR Update.[20] The seasonal NO_X trading programs established under CAIR and the original CSAPR were both designed to address the 1997 8-hour ozone NAAQS,[21] while the trading program established under the CSAPR Update was designed to address the 2008 8-hour ozone NAAQS. The CAIR seasonal NO_X trading program operated from 2009 through 2014, the original CSAPR seasonal NO_X trading program started operating in 2015,[22] and the CSAPR Update trading program started operating in 2017.

For purposes of this proposed action, the most important difference between the NBTP and its successor seasonal NO_X trading programs concerns the types of sources participating in the various programs. As discussed above, the NBTP was designed to cover both large EGUs and large non-EGU boilers

[11] *Am. Trucking Assns.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999), *affirmed in part and reversed in part sub nom. Whitman* v. *Am. Trucking Assns.,* 531 U.S. 457 (2001).

[12] 65 FR 56245 (Sept. 18, 2000) (codified at 40 CFR 51.121(q)).

[13] Most judicial challenges to the Rule and its amendments were denied, but the court vacated or remanded with respect to certain issues in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000) and *Appalachian Power Co.* v. *EPA,* 251 F.3d 1026 (D.C. Cir. 2001).

[14] For a discussion of all amendments to the NO_X SIP Call through 2004, see 69 FR 21604 (Apr. 21, 2004).

[15] For a discussion of the Georgia-related amendments, see 73 FR 21528 (Apr. 22, 2008).

[16] Some states expanded NBTP applicability under their SIPs to include additional sources, primarily smaller EGUs. Unlike large EGUs and large non-EGU boilers and turbines, the additional sources are not subject to the NO_X SIP Call's ongoing obligation under § 51.121(i)(4) for SIPs to include part 75 monitoring requirements and therefore would not be affected by the amendments proposed in this action.

[17] 70 FR 25162 (May 12, 2005) (SIP requirements); 71 FR 25328 (Apr. 28, 2006) (parallel federal implementation plan requirements).

[18] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008).

[19] 76 FR 48208 (Aug. 8, 2011); *see also* 76 FR 80760 (Dec. 27, 2011) (adding seasonal NO_X emissions reduction requirements for sources in five states), 79 FR 71663 (Dec. 3, 2014) (tolling implementation dates by three years).

[20] 81 FR 74504 (Oct. 26, 2016). Consolidated challenges to the CSAPR Update are pending in *Wisconsin* v. *EPA,* No. 16–1406 (D.C. Cir. appeal docketed Nov. 23, 2016).

[21] CAIR also established trading programs for sulfur dioxide (SO_2) and annual NO_X emissions designed to address the 1997 annual fine particulate matter ($PM_{2.5}$) NAAQS. These additional trading programs were replaced under the original CSAPR by trading programs for SO_2 and annual NO_X emissions established to address both the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS.

[22] The original CSAPR seasonal NO_X trading program remains in effect for sources in Georgia but after 2016 has not applied to sources in any state subject to the NO_X SIP Call as amended.

and turbines. In contrast, by default the three successor trading programs have covered only units considered EGUs under those programs, which generally means all units that would be classified as NO_X SIP Call large EGUs as well as a small subset of the units that would be classified as NO_X SIP Call large non-EGU boilers and turbines.[23] Under the CAIR seasonal NO_X trading program, most NO_X SIP Call states exercised an option to expand program applicability to include all their NO_X SIP Call large non-EGU boilers and turbines,[24] but the option was eliminated under the original CSAPR seasonal NO_X trading program and no state has exercised the restored option made available under the CSAPR Update trading program.[25] Consequently, at present most NO_X SIP Call large non-EGU boilers and turbines do not participate in a successor trading program to the NBTP.

The second relevant difference between the NBTP and its successor trading programs concerns the various programs' geographic areas of coverage. In each successive rulemaking to address states' good neighbor obligations, even in instances where the rulemakings concerned the same ozone NAAQS, other factors have changed, including the available data on air quality, emissions inventories, and potential emission control opportunities. Given different inputs to the analytic processes for the successive rulemakings, EPA's determinations regarding which upwind states must reduce emissions to address good neighbor obligations have differed as well. At present, EGUs in fourteen NO_X SIP Call states participate in the CSAPR Update trading program.[26] EGUs in the remaining seven NO_X SIP Call jurisdictions do not currently participate in a successor trading program to the NBTP, although most such units are subject to other EPA programs with comparable part 75 monitoring requirements.[27]

In the CAIR rulemaking, EPA amended the NO_X SIP Call regulations both to provide that the NBTP would be discontinued coincident with implementation of the CAIR seasonal NO_X trading program and to require states to adopt new control measures into their SIPs replacing the portions of their NO_X SIP Call emissions reduction requirements that had been met through the NBTP.[28] As discussed above, notwithstanding the discontinuation of the NBTP, the NO_X SIP Call's requirements for enforceable mass emissions limits and Part 75 monitoring continue to apply to large EGUs and large non-EGU boilers and turbines in all affected states. Since the CAIR rulemaking, EPA has worked with NO_X SIP Call states individually to assist them in revising their SIPs to meet these ongoing NO_X SIP Call requirements, whether through use of the NBTP's successor trading programs (to the extent those options have been available) or through other replacement control measures.

C. The NO_X SIP Call's Contributions to Attainment of the NAAQS

As described in section II.B., implementation of the NBTP began in 2003 for the sources in some affected states and in 2004 for the sources in most remaining affected states, and the program operated through the 2008 ozone season. Between 2000 and 2004, seasonal NO_X emissions from all sources participating in the NBTP[29] fell from 1,256,237 tons to 609,029 tons, a decrease of over 50%, and by 2008, seasonal NO_X emissions from these sources declined further to 481,420 tons.[30] By comparison, the portions of the statewide seasonal NO_X emissions budgets assigned to sources participating in the NBTP in all NO_X SIP Call states—as indicated by the numbers of emission allowances available for allocation for the 2008 ozone season pursuant to states' SIPs—sum to 528,453 tons.[31] EPA believes that the NO_X SIP Call as implemented through the NBTP was an important driver of these emissions reductions.

Under CAA section 107(d)(3)(E), 42 U.S.C. 7407(d)(3)(E), redesignation of an area to attainment of a NAAQS requires a determination that the improvement in air quality is due to ''permanent and enforceable'' emissions reductions. At least 140 EPA final actions redesignating areas in 20 states to attainment with an ozone NAAQS or a $PM_{2.5}$ NAAQS (because NO_X is a precursor to $PM_{2.5}$ as well as ozone) have relied in part on the Rule's emissions reductions.[32] This includes actions redesignating areas to attainment with the 1997 ozone NAAQS, the 2008 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. In response to legal challenges, multiple courts of appeals have held that the Rule's emissions reductions qualify as permanent and enforceable and therefore may be used to support redesignation actions.[33]

EPA has reinforced the permanence and enforceability of the Rule's emissions reductions by expressly requiring in the implementation rules for both the 1997 ozone NAAQS and the 2008 ozone NAAQS that, first, the NO_X SIP Call in general and states' emissions budgets in particular will continue to apply after revocation of the previous ozone NAAQS and, second, any modifications to control requirements approved into a SIP pursuant to the Rule are subject to anti-backsliding requirements under CAA section 110(l), 42 U.S.C. 7410(l).[34]

In this action, to avoid any possible argument that the proposed changes would result in a lessening of permanence and enforceability that could threaten continued reliance on the NO_X SIP Call's emissions reductions to support other actions, EPA is expressly not proposing to substantively amend—and is not reopening for substantive comment—the Rule's key provisions supporting these attributes. These key provisions include the statewide emissions budgets and general enforceability and monitoring

[23] For example, a unit qualifying as exempt from the Acid Rain Program under the provision for cogeneration units at 40 CFR 72.6(b)(4) could be covered under the CAIR, original CSAPR, and CSAPR Update trading programs as an EGU. Under the NO_X SIP Call as amended, such a unit would be classified as a large non-EGU boiler or turbine.

[24] *See* 40 CFR 51.123(aa)(2)(i) and (ee)(1).

[25] *See* 40 CFR 52.38(b)(8)(ii) and (b)(9)(ii).

[26] The CSAPR Update applies to EGUs in the NO_X SIP Call states of Alabama, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia as well as eight additional states that were not subject to the NO_X SIP Call as amended.

[27] EGUs in the NO_X SIP Call jurisdictions of Connecticut, Delaware, Massachusetts, North Carolina, Rhode Island, South Carolina, and the District of Columbia are not subject to the CSAPR Update. Most NO_X SIP Call EGUs in these jurisdictions are subject to the Acid Rain Program, and all NO_X SIP Call EGUs in North Carolina and South Carolina participate in trading programs for SO_2 and annual NO_X emissions established under the original CSAPR.

[28] 40 CFR 51.121(r); *see also* 40 CFR 51.123(bb) and 52.38(b)(10)(ii) (authorizing use of CAIR and CSAPR Update seasonal NO_X trading programs as NBTP replacement control measures for large non-EGU boilers and turbines).

[29] Small portions of these totals represent emissions and budget amounts for sources that participated in the NBTP pursuant to requirements or opt-in provisions in certain states' SIPs but that are not large EGUs or large non-EGU boilers or turbines subject to § 51.121(i)(4). 2017 emissions for these types of sources are shown separately in Table 1 in section III.A. of this notice.

[30] *See* The NO_X Budget Trading Program: 2008 Emission, Compliance, and Market Analyses (July 2009) at 14, available in the docket for this proposed action.

[31] *Id.*

[32] *See* Redesignation Actions Relying on NO_X SIP Call Emissions Reductions (August 2018), available in the docket for this proposed action.

[33] *Sierra Club* v. *EPA,* 774 F.3d 383, 397–99 (7th Cir. 2014) (holding that NO_X SIP Call emissions reductions may be relied on as permanent and enforceable for purposes of redesignations); *Sierra Club* v. *EPA,* 793 F.3d 656, 665–68 (6th Cir. 2015) (same, but vacating redesignations on other grounds).

[34] *See* 40 CFR 51.905(f) and 51.1105(e).

requirements as well as the requirements for enforceable limits on seasonal NO_X mass emissions from large EGUs and large non-EGU boilers and turbines. As discussed in section III.A., EPA believes that under current circumstances, the proposed amendment to allow states to establish alternate monitoring requirements for large EGUs and large non-EGU boilers and turbines does not undermine assurance that the Rule's required emissions reductions will continue to be achieved and therefore does not pose a risk to the permanence and enforceability of the emissions reductions.

III. Proposed Amendments to the NO_X SIP Call Regulations

This section describes the amendments being proposed as well as the rationales. In section III.A., EPA discusses a proposed amendment to allow states to revise their SIPs to establish monitoring requirements for large non-EGU boilers and turbines (and some large EGUs not subject to the Acid Rain Program or any CSAPR trading programs) other than Part 75 monitoring requirements. This is the only amendment proposed in this action that would have a substantive impact on existing regulatory requirements.

Section III.B. discusses a proposed amendment that would rescind the findings of good neighbor obligations with regard to the 1997 8-hour ozone NAAQS that originally constituted a second basis for the NO_X SIP Call. These findings have been subject to an indefinite stay by EPA since 2000, and all the NO_X SIP Call's requirements as implemented rest independently on findings of good neighbor obligations with regard to the 1979 1-hour ozone NAAQS that would remain in place. The proposed rescission thus would have no substantive effect on the regulatory obligations faced either by states or by sources subject to the states' SIPs.

Sections III.C., III.D., III.E., and III.F. discuss additional proposed amendments that would remove obsolete provisions or clarify the remaining NO_X SIP Call regulations without substantively altering any existing regulatory requirements. Section III.C. addresses provisions relating to emissions budgets and emissions inventories, section III.D. addresses provisions relating to interstate emission allowance trading program options, and section III.E. addresses procedural provisions. Section III.F. identifies the locations of minor editorial revisions not covered in the other sections.

A. Emissions Monitoring Requirements

Under § 51.121(i)(4) of the existing NO_X SIP Call regulations, where a state's SIP revision contains control measures for large EGUs or large non-EGU boilers and turbines, the SIP must also require part 75 monitoring for these types of sources. As discussed in section II.A., all NO_X SIP Call states triggered this requirement by including control measures in their SIPs for these types of sources, and the requirement remains in effect despite the discontinuation of the NBTP after the 2008 ozone season. In this action, for the reasons discussed below, EPA proposes to amend the NO_X SIP Call provision at § 51.121(i)(4) to make the inclusion of part 75 monitoring requirements for these sources in SIPs optional rather than mandatory for NO_X SIP Call purposes. The SIPs would still need to include some form of emissions monitoring requirements for these types of sources, consistent with the Rule's general enforceability and monitoring requirements at § 51.121(f)(1) and (i)(1), respectively, but states would no longer be required to satisfy these general Rule requirements specifically through the adoption of part 75 monitoring requirements.[35] Finalization of this proposed amendment would not in itself eliminate part 75 monitoring requirements for any sources but would enable EPA to approve SIP submittals replacing these requirements with other forms of monitoring requirements.

EPA originally established the condition that SIPs must include part 75 monitoring requirements based on determinations that, first, a requirement for mass emissions limits for large EGUs and large non-EGU boilers and turbines was feasible and provided the greatest assurance that the NO_X SIP Call's required emissions reductions would be achieved, and second, part 75 monitoring was a feasible and cost-effective way to ensure compliance with the mass emissions limits for these sources.[36] (Part 75 monitoring requirements were also established independently as an essential element of the now-discontinued NBTP, which like EPA's other emission allowance trading programs could function only with timely reporting of consistent, quality-assured mass emissions data by all participating units.) As noted in section II.C., to ensure that the NO_X SIP Call's emissions reductions can continue to be relied on as permanent and enforceable for purposes of other actions, EPA is not proposing to amend the Rule's existing requirements regarding enforceable mass emissions limits for these sources. However, EPA believes that under current circumstances, allowing states to establish alternate monitoring requirements for large EGUs and large non-EGU boilers and turbines would not pose a risk to the permanence and enforceability of the Rule's emissions reductions.

The first relevant current circumstance is the substantial margins by which all NO_X SIP Call states are now complying with the portions of their statewide emissions budgets assigned to large EGUs and large non-EGU boilers and turbines. As shown in Table 1, in 2017, seasonal NO_X emissions from sources that would have been subject to the NBTP across the region covered by the NO_X SIP Call were approximately 200,000 tons, which is less than 40% of the sum of the relevant portions of the statewide final NO_X budgets. Table 1 also shows that no state's emissions exceeded 71% of the relevant portion of its budget.[37] These comparisons demonstrate that the Rule's required emissions reductions would continue to be achieved even with substantial increases in emissions from current levels. EPA views the possibility of such large increases as remote because of requirements under other state and federal environmental programs[38] and changes to the fleet of affected sources since 2008.[39]

[35] The proposed revision would not authorize states to create exceptions to any part 75 monitoring requirements that might apply to a source under a different legal authority.

[36] *See* 63 FR 57356, 57451–52.

[37] 2017 emissions from Missouri sources were just over 70% of the relevant portion of the state's budget.

[38] For example, for the 11 states covered in their entirety under both programs—Illinois, Indiana, Kentucky, Maryland, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia—EGU emissions budgets under the current CSAPR Update seasonal NO_X trading program range from 17% to 66% of the portions of the respective states' NO_X SIP Call emissions budgets based on EGU emissions. *Compare* 40 CFR 97.810(a) (CSAPR Update budgets) *with* 65 FR 11222, 11225 (Mar. 2, 2000) (EGU-based portions of NO_X SIP Call budgets).

[39] For example, sources responsible for over 40% of 2008 emissions reported under the NBTP have either ceased operation or switched from coal combustion to gas or oil combustion since 2008. *See* Post-2008 Changes to Units Reporting Under the NO_X Budget Trading Program (August 2018), available in the docket for this proposed action.

TABLE 1—2017 EMISSIONS AND RELEVANT EMISSIONS BUDGET AMOUNTS BY STATE

State	NO_X emissions during the 2017 ozone season (tons) from:				Portion of statewide emissions budget assigned to NBTP sources (tons)
	NBTP sources also subject to Part 75 under other programs	Other NBTP large EGUs and large non-EGU boilers and turbines	Other NBTP sources subject to Part 75 under NSC SIPs	Total for all NBTP sources	
Alabama (part)	7,166	1,911	0	9,077	25,497
Connecticut	380	10	39	430	4,477
Delaware	324	511	0	835	5,227
District of Columbia	0	20	0	20	233
Illinois	13,038	1,493	0	14,531	35,557
Indiana	20,396	1,201	823	22,419	55,729
Kentucky	19,978	75	0	20,053	36,109
Maryland	2,422	516	0	2,939	15,466
Massachusetts	734	113	32	879	12,861
Michigan (part)	14,580	205	0	14,785	31,247
Missouri (part)	9,486	0	0	9,486	13,459
New Jersey	1,646	310	0	1,956	13,022
New York	4,062	941	611	5,614	41,385
North Carolina	16,352	1,689	0	18,041	34,703
Ohio	20,012	993	0	21,005	49,842
Pennsylvania	13,616	837	0	14,453	50,843
Rhode Island	193	0	0	193	936
South Carolina	5,030	1,043	0	6,074	19,678
Tennessee	7,785	2,350	0	10,135	31,480
Virginia	7,462	589	0	8,051	21,195
West Virginia	18,187	276	0	18,463	29,507
Total	182,849	15,084	1,505	199,438	528,453

Data sources: Emissions data are from EPA's Air Markets Program Database, *https://ampd.epa.gov/ampd*. In a few cases where 2017 data are not available, the most recent available data are used instead. Budget data are from The NO_X Budget Trading Program: 2008 Emission, Compliance, and Market Analyses (July 2009) at 14, available in the docket for this proposed action.

The second relevant current circumstance is that even with the amendments proposed in this action, Part 75 monitoring requirements would remain in effect for most NO_X SIP Call large EGUs pursuant to other regulatory requirements, including the Acid Rain Program and the CSAPR trading programs, and these large EGUs are responsible for most of the collective emissions of NO_X SIP Call large EGUs and large non-EGU boilers and turbines. Table 1 shows the portions of the reported seasonal NO_X emissions for each state reported by units that would continue to be subject to Part 75 monitoring requirements even if the amendments proposed in this action are finalized and all states choose to revise their SIPs.[40] As indicated in the table, the sources that would continue to report under Part 75 account for over 90% of the overall emissions. If the proposed amendments are finalized and a state chooses to revise its SIP to no longer require Part 75 monitoring for some sources, then under § 51.121(f)(1) and (i)(1)—which EPA is not proposing to amend—the SIP would still have to include provisions requiring all large EGUs and large non-EGU boilers and turbines subject to control measures for purposes of the NO_X SIP Call to submit other forms of information on their seasonal NO_X emissions sufficient to ensure compliance with the control measures. EPA believes that in the context of the substantial compliance margins discussed above, and given the continued availability of Part 75 monitoring data from sources responsible for most of the relevant emissions, emissions data from the remaining sources submitted pursuant to other forms of monitoring requirements can provide sufficient assurance that the Rule's overall required emissions reductions will continue to be achieved.

B. Good Neighbor Obligations Under the 1997 8-Hour Ozone NAAQS

As discussed in section II.A., the NO_X SIP Call as originally promulgated rested on findings of good neighbor obligations for affected states with respect to both the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS, but following an adverse D.C. Circuit decision, EPA amended the Rule to indefinitely stay the findings under the 1997 8-hour ozone NAAQS. In this action, EPA proposes to rescind as obsolete the stayed findings of good neighbor obligations under the 1997 8-hour ozone NAAQS and to remove the corresponding NO_X SIP Call regulatory provision at § 51.121(a)(2) along with related language in other provisions, as further discussed below.

Since the stay of the NO_X SIP Call's findings of good neighbor obligations under the 1997 8-hour ozone NAAQS, EPA has addressed states' good neighbor obligations under this NAAQS in both the original CSAPR and the CSAPR Update,[41] superseding the stayed findings and making it appropriate to rescind them, as proposed here. First, in the original CSAPR rulemaking, EPA either found no good neighbor obligation or quantified good neighbor requirements under the 1997 8-hour ozone NAAQS for all states originally covered by the NO_X SIP Call (including Georgia, Wisconsin, and the portions of Alabama, Michigan, and Missouri not covered by the NO_X SIP Call as implemented following amendments), finding for some states that the

[40] Although the Acid Rain Program does not require units to report NO_X mass emissions specifically, NO_X mass emissions can be calculated from other Part 75 data that are required to be reported.

[41] EPA also addressed states' good neighbor obligations under the 1997 8-hour ozone NAAQS in CAIR, but as noted earlier the D.C. Circuit remanded CAIR to EPA for replacement.

quantified emissions reduction requirements represented a full remedy for the states' good neighbor obligations and for other states that the quantified emissions reduction requirements might only partially address the states' good neighbor obligations.[42] Then, after the D.C. Circuit remanded the CSAPR Phase 2 seasonal NO_X budgets for several states,[43] in the CSAPR Update EPA again evaluated states' good neighbor obligations with respect to the 1997 8-hour ozone NAAQS, determining that the states with remanded CSAPR seasonal NO_X budgets no longer had good neighbor obligations under this NAAQS and that the remaining states' good neighbor obligations under this NAAQS were fully addressed by their CSAPR emissions reduction requirements.[44] Thus, for each of the states subject to the stayed findings of good neighbor obligations with respect to the 1997 8-hour ozone NAAQS under the NO_X SIP Call, upon further analysis using more recent data in the CSAPR and CSAPR Update rulemakings, EPA has determined that the state either has no good neighbor obligation under this NAAQS or that the state's obligation has been fully addressed through the state's CSAPR seasonal NO_X emissions reduction requirements.

In conjunction with the proposed rescission and removal of the findings discussed above, EPA also proposes to remove the regulatory provision at § 51.121(q) staying the findings and to remove phrases in the provisions at § 51.121(c)(1) and (c)(2) referencing the 1979 1-hour ozone NAAQS solely to distinguish that NAAQS from the 1997 8-hour ozone NAAQS. When the findings of good neighbor obligations under the 1997 8-hour ozone NAAQS are rescinded and removed from the regulations, the regulatory provision staying the findings will become obsolete. Similarly, the phrases distinguishing among multiple NAAQS will become superfluous once the regulations only contain language addressing a single NAAQS.

C. Emissions Budget and Emissions Inventory Provisions

To simplify and clarify the regulations, EPA proposes to update the NO_X SIP Call provisions describing the Rule's Phase I and Phase II emissions budgets and emissions reduction requirements at § 51.121(e)(2)(i) and (e)(3) as well as related language in other provisions. EPA is also proposing to remove obsolete Rule provisions concerning the budgets and emissions inventories at § 51.121(e)(4), (e)(5), and (g)(2)(ii) along with a related cross-reference. The proposed updates and removals would not alter any existing regulatory requirements.

As discussed in section II.A., in response to a D.C. Circuit opinion remanding the Rule with respect to certain issues, EPA divided the Rule's overall emissions reduction requirements into two phases. As the first step in this phased approach, in April 2000 EPA sent letters to officials in each NO_X SIP Call state identifying the portion of the state's overall emissions reduction requirement that was not implicated by the remanded issues and that should therefore be implemented in Phase I.[45] The letters expressed each state's Phase I emissions reduction requirement in the form of a Phase I emissions budget that was computed as the state's projected 2007 emissions inventory minus the required Phase I emissions reduction. Then, to complete the phased approach, in April 2004 EPA finalized a rulemaking action determining for each covered state, after reconsideration of all remanded issues, the final overall emissions reduction requirement, the corresponding final budget, and the incremental difference between the Phase I budget and the final budget.[46] In the 2004 action, the table of emissions budgets in § 51.121(e)(2)(i) of the NO_X SIP Call regulations was revised to show the amounts of the Rule's final emissions budgets. However, reflecting the 2004 amendments' focus on the Phase II requirements, EPA did not include the Phase I budgets in the regulatory text but instead added a new § 51.121(e)(3) with a table showing the amounts of the required incremental Phase II emissions reductions.

While the preamble of the 2004 action was clear about the nature of what was being determined in that action, when incorporating the amounts of the required incremental Phase II emissions reductions into the Rule's regulatory text, EPA mischaracterized the amounts as ''Phase II incremental budget'' amounts and as ''portions of'' the Phase II final budgets. To eliminate the mischaracterization, EPA proposes in this action to remove § 51.121(e)(3) and in its place to add a column showing the amounts of the Phase I budgets to the existing table in § 51.121(e)(2)(i) that already shows the amounts of the final budgets. The source for the proposed column of Phase I budget amounts is the same table in the preamble for the 2004 action that was the source for both the final budget amounts and the incremental Phase II emissions reduction amounts.[47] Relatedly, EPA proposes to revise the definitions of ''Phase I SIP submission'' and ''Phase II SIP submission'' at § 51.121(a)(3)(i) and (a)(3)(ii), distinguishing those terms according to the applicable budgets rather than according to the treatment of the mischaracterized incremental Phase II emissions reduction amounts. EPA also proposes to modify the provisions at § 51.121(b)(1) and (b)(1)(i) to refer to ''*each* SIP revision'' and ''the *applicable* budget'', respectively, reflecting the fact that most states ultimately made separate Phase I and Phase II SIP submissions addressing the Phase I and final budgets. Collectively, these proposed revisions would express the Rule's existing final requirements, as well as the Phase I requirements, more simply and clearly.

In addition to the clarifying updates to the Rule provisions described above, EPA is proposing to remove as obsolete three other sets of provisions related to the NO_X SIP Call budgets and projected 2007 emissions inventories: § 51.121(e)(4), which addresses the compliance supplement pool; § 51.121(e)(5), which sets out a time-limited process for submitting new data that could be used to revise the emissions inventories and budgets published as part of the original Rule; and § 51.121(g)(2)(ii), which as originally promulgated showed the projected 2007 emissions inventory for each state by sector. A phrase in the provision at § 51.121(g)(2)(i) referencing the emissions inventory table would also be removed.

The Rule's compliance supplement pool provisions at § 51.121(e)(4) allowed each state to issue a certain quantity of credits beyond the state's budget that sources could use for compliance with emission control requirements. Credits were required to be issued no later than the commencement of control measures under the Rule for the state's sources and could be used for compliance only in the first two years of control measures. These deadlines have long passed, making the compliance

[42] *See* 76 FR 48208, 48210.

[43] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015).

[44] *See* 81 FR 74504, 74523–26.

[45] *See* Summary of EPA's Approach to the NO_X SIP Call in Light of the March 3rd Court Decision (Apr. 11, 2000), available in the docket for this proposed action.

[46] 69 FR 21604, 21628–29.

[47] 69 FR 21604, 21629 (Table 6). In the table, the incremental emissions reduction amount for each state is shown as the ''Phase II incremental difference'' between the state's Phase I and final budgets. Missouri is not included in the table because the state did not have a Phase I emissions reduction requirement or corresponding Phase I budget.

supplement pool credits and the provisions governing them obsolete.

The Rule's provisions at § 51.121(e)(5) allow for the submission of new data to be used to revise the original emissions inventories and budgets. The provisions include a February 1999 deadline for such data to be submitted and an April 1999 deadline for EPA to act on the submitted data. Again, these deadlines have long passed, making the provisions governing the submission and use of such new data obsolete.

As originally promulgated, the NO_X SIP Call provision at § 51.121(g)(2)(ii) presented a table of the projected 2007 emissions inventories for each covered state by sector. The table's purpose was to serve as an input to states' required demonstrations that their SIP revisions would achieve sufficient emissions reductions to meet the Rule's requirements. In 1999 and 2000, EPA updated the state budgets and emissions inventories and amended the table,[48] but when the Rule's budgets were amended for the final time in 2004, the table was not amended. The information in the table consequently does not correspond to the NO_X SIP Call as implemented, most notably because it still includes information for Wisconsin and it includes information for the entire states of Alabama, Michigan, and Missouri instead of only the portions of the states subject to the Rule as amended in 2004.[49] Because the preamble of the 2004 action does not include all data necessary to update the table, and because the table's intended purpose has already been fulfilled through EPA's approval of all required Phase I and Phase II SIP submissions, EPA considers it appropriate to remove § 51.121(g)(2)(ii) as obsolete without replacement. Upon removal of the table, the phrase in § 51.121(g)(2)(i) referencing the table will also become obsolete, and that phrase would therefore be removed as well.

D. Interstate Trading Program Options

The NO_X SIP Call regulations include two separate sets of provisions governing the potential use of interstate emission allowance trading programs as control measures in covered states' SIP revisions, one set at § 51.121(b)(2) concerning the use of trading programs in general and one set at § 51.121(p) concerning the use of the NBTP in particular. In this action, EPA is proposing to remove as obsolete both sets of provisions governing the potential use of trading programs and to remove or update references to those provisions in several other locations in the NO_X SIP Call regulations and in the CSAPR regulations. EPA is also proposing to clarify the provision at § 51.121(r)(2) setting forth the transition requirements applicable to states following discontinuation of the NBTP.

As discussed in section II.B., EPA discontinued administration of the NBTP after the 2008 ozone season and has since replaced the program, for some states and types of sources, with successor seasonal NO_X trading programs. The NBTP's discontinuation has made the NO_X SIP Call provision at § 51.121(p) governing use of the NBTP as a control measure obsolete, and removal of the obsolete provision would in turn make cross-references to it obsolete. Accordingly, EPA would remove certain cross-references to § 51.121(p) from the provisions at § 51.121(r)(1) and § 51.122(c)(1)(ii) and would replace the remaining cross-references to § 51.121(p) in the NO_X SIP Call regulations at § 51.121(r)(1) and (r)(2) and in the CSAPR regulations at 40 CFR 52.38(b)(8)(ii), (b)(8)(iii)(A)(*2*), (b)(9)(ii), and (b)(9)(iii)(A)(*2*) with cross-references to § 51.121 more broadly.[50]

The NO_X SIP Call provisions at § 51.121(b)(2) also authorize the use of interstate emission allowance trading programs other than the NBTP as control measures to address states' emissions reduction requirements under the Rule if the trading programs meet certain criteria. In theory, after the NBTP was discontinued, states could have elected to establish one or more alternate interstate trading programs under § 51.121(b)(2) to replace the NBTP for any sources not covered by the NBTP's successor trading programs,[51] but no states chose to do so. Further, recent emissions of large EGUs and large non-EGU boilers and turbines in every NO_X SIPCall state have been below the collective caps that the states adopted for these sources in their Phase I and Phase II SIP revisions, indicating that there is currently little or no need for a new interstate trading program to help these sources meet NO_X SIP Call requirements. EPA is unaware of any current state interest in pursuing this option. Accordingly, EPA considers the provisions at § 51.121(b)(2) functionally obsolete and appropriate for removal. Removal of § 51.121(b)(2) would make a reference to that provision in § 51.121(b)(1)(i) obsolete, and that reference therefore would also be removed.

In the CAIR rulemaking, besides adding a provision at § 51.121(r)(1) discontinuing the NBTP upon implementation of the CAIR seasonal NO_X trading program, EPA also added a provision at § 51.121(r)(2) establishing transition requirements for states. The basic requirement of § 51.121(r)(2) is that each NO_X SIP Call state must adopt replacement control measures into its SIP to achieve the same portion of the state's required emissions reductions under the Rule as the state originally projected the NBTP would achieve. As originally promulgated, the provision included an exception for instances where a state relied on the CAIR seasonal NO_X trading program for this purpose. Because the original CSAPR seasonal NO_X trading program did not provide an option to expand applicability to cover former NBTP large non-EGU boilers and turbines, in the original CSAPR rulemaking EPA amended the exception at § 51.121(r)(2) to indicate that the option to rely on the CAIR seasonal NO_X trading program was expiring and necessarily did not indicate the existence of a new replacement option. In the CSAPR Update rulemaking, although a new replacement option was created in the CSAPR Update regulations authorizing reliance on the new trading program to meet NO_X SIP Call obligations for large non-EGU boilers and turbines, EPA neglected to amend the exception language in § 51.121(r)(2) to reference the existence of the new replacement option.

As noted above, in this action EPA would update obsolete cross-references to § 51.121(p) in both § 51.121(r)(1) and (r)(2). EPA also proposes to update the post-NBTP transition provision at § 51.121(r)(2) in two further respects. First, as a replacement for the obsolete cross-reference identifying the terminated option to rely on the CAIR seasonal NO_X trading program to fill gaps created by NBTP discontinuation, a new cross-reference identifying the

[48] The current table incorrectly presents the budget data from the 2000 action, not the ''base'' projected 2007 emissions inventory data from that action. *See* 65 FR 11222, 11225–26 (Tables 1 and 2).

[49] In 2008, EPA removed information for Georgia but did not otherwise update the table. 73 FR 21528, 21538.

[50] Note that EPA is not proposing to remove the NBTP model rule at subparts A through I of 40 CFR part 96 in this action. The model rule is still incorporated by reference into several states' SIPs, where it continues to serve as a state-law mechanism implementing part 75 monitoring requirements for large non-EGU boilers and turbines even though the NBTP's allowance-related provisions are no longer being administered.

[51] The option for states to meet their ongoing NO_X SIP Call requirements for large non-EGU boilers and turbines by expanding applicability under the CSAPR Update trading program is independently authorized under the CSAPR regulations at 40 CFR 52.38(b)(10)(ii) rather than under § 51.121(b)(2). Similarly, the former option to rely on the CAIR seasonal NO_X trading program for this purpose was independently authorized under the CAIR regulations.

current option to rely on the CSAPR Update trading program for this purpose would be added. This revision would not create a new option—because the option to rely on the CSAPR Update is already authorized under the CSAPR regulations—but it would clarify the NO_X SIP Call regulations. Second, § 51.121(r)(2) would be revised to expressly apply where a state's SIP ''includes *or included*'' trading program provisions to achieve the required emissions reductions. The purpose of this proposed revision is to eliminate any possible mistaken inference that a state's obligation to maintain NO_X SIP Call emission controls might be contingent on whether its SIP currently includes trading program provisions and to reinforce that the Rule's emissions reductions are permanent and enforceable, as they must be to support other EPA actions. Again, this revision would not alter any existing regulatory requirements but would clarify the regulations.

E. Procedural Provisions

EPA proposes to remove as obsolete a provision of the NO_X SIP Call regulations setting forth certain procedural requirements for SIP submissions under the Rule. Currently, the Rule's requirements at § 51.121(d) include (1) submission deadlines for Phase I and Phase II SIP submissions, (2) a requirement that submissions satisfy the general criteria for completeness in appendix V to 40 CFR part 51, and (3) a requirement that submissions be made in the form of five paper copies. The submission deadlines are obsolete because all required Phase I and Phase II SIP submissions have been made, and the requirement for five paper copies is obsolete because EPA now allows electronic SIP submissions. Any future SIP submissions under the Rule—such as submissions taking advantage of the more flexible monitoring requirements proposed in this action—would be subject to 40 CFR 51.103(a), a provision of EPA's general SIP regulations that requires SIP submissions to conform to the completeness criteria in appendix V and also identifies the current electronic and paper SIP submission options. Removal of § 51.121(d) therefore would clarify the regulations by removing the obsolete requirement for five paper copies and would not create any gap in procedural requirements for any future SIP submissions under the Rule.

F. Editorial Revisions

EPA also proposes to make non-substantive, solely editorial revisions to several provisions of the NO_X SIP Call regulations beyond those already discussed. One revision would replace the full-text definition of ''fossil fuel-fired'' at § 51.121(i)(5) with a cross-reference to an identical definition at § 51.121(f)(3). In addition, minor revisions would be made to § 51.121(b)(1)(ii), (e)(2)(ii)(B), (e)(2)(ii)(E), (f)(2)(i)(B), (f)(2)(ii), (h), (i)(2), (i)(3), (l)(1), (l)(2), (m), (n), and (o) and the section heading. The proposed revisions would not alter any regulatory requirements and would generally improve clarity by reducing redundancy, standardizing terminology, and correcting various editorial errors.

IV. Impacts of the Proposed Amendments

The proposed amendments would not change any of the NO_X SIP Call's existing regulatory requirements related to statewide emissions budgets or enforceable mass emissions limits for large EGUs and large non-EGU boilers and turbines. Accordingly, EPA expects that the amendments, if finalized, would have no impact on emissions or air quality.

The only amendment proposed in this action that would substantively alter existing regulatory requirements is the proposal to allow states to revise their SIPs to establish monitoring requirements for large non-EGU boilers and turbines (and some large EGUs not subject to the Acid Rain Program or any CSAPR trading programs) other than part 75 monitoring requirements. Because states, not EPA, would decide whether to revise the monitoring requirements in their SIPs and because EPA lacks complete information on the remaining monitoring requirements that the sources would face, it is currently not possible to predict the amount of monitoring cost reductions that would occur if this proposed rule is finalized. However, EPA expects that at least some affected states would revise their SIPs and at least some sources would experience reductions in monitoring costs.

The potential cost reduction opportunity for any given unit in a state that chooses to revise its SIP would depend on which of the various monitoring methodologies allowed under part 75 the unit currently uses and what other state and federal monitoring requirements the unit would still face, including monitoring requirements adopted in the state's SIP to replace the part 75 monitoring requirements. EPA's records indicate that currently there are approximately 310 large EGUs and large non-EGU boilers and turbines that are subject to part 75 monitoring requirements pursuant to the existing NO_X SIP Call requirement at § 51.121(i)(4) and that are not also subject to comparable part 75 monitoring requirements under the Acid Rain Program or a CSAPR trading program. According to the part 75 monitoring plans submitted for these units,[52] approximately 90 units use monitoring methodologies involving continuous emission monitoring systems (CEMS) to measure both stack gas flow rate and the concentrations of certain gases in the effluent gas stream, approximately 140 units use methodologies involving gas concentration CEMS but not stack gas flow rate CEMS, and approximately 80 units use non-CEMS methodologies.[53] As a result of the amendments proposed in this action, some of the 230 units currently using CEMS may ultimately be able to discontinue use of stack gas flow rate CEMS, gas concentration CEMS, or both, to the extent that the units do not face similar monitoring requirements under other state or federal regulations, possibly including, but not limited to, the replacement monitoring requirements established by states for NO_X SIP Call purposes. Discontinuing usage of one or both types of CEMS has the potential to result in reductions in overall monitoring costs. Further, even if a unit remains subject to requirements to use some type of CEMS under other regulations, the specific CEMS-related requirements under the other regulations may entail lower costs than the specific CEMS-related requirements under part 75.[54]

With respect to the 80 units that are subject to part 75 monitoring requirements pursuant to the existing NO_X SIP Call requirement at § 51.121(i)(4), that are not also subject to comparable part 75 monitoring requirements under the Acid Rain Program or a CSAPR trading program, and that already use non-CEMS methodologies under Part 75, EPA expects that these units generally would experience little or no reduction in monitoring costs resulting from the

[52] The monitoring plans are available at *https://www.epa.gov/airmarkets/monitoring-plans-part-75-sources.*

[53] Under part 75, options to use alternatives to stack gas flow rate CEMS are available to almost all units that combust only gaseous and liquid fuels, and options to use alternatives to gas concentration CEMS for measuring NO_X emissions are available to any such units whose utilization rates or mass emissions fall below specified maximum limits. *See* 40 CFR 75.19(a)(1), section 1.1 of appendix D to 40 CFR part 75, and section 1.1 of appendix E to 40 CFR part 75; *see also* 40 CFR 72.2 (definitions of ''gas-fired'', ''oil-fired'', and ''peaking unit'').

[54] For example, other regulations may require less extensive data reporting or less comprehensive quality-assurance testing than would be required under part 75.

amendments proposed in this action. Similarly, the proposed amendments would not lead to any reduction in monitoring costs for units that would remain subject to Part 75 monitoring requirements under the Acid Rain Program or a CSAPR trading program. The proposed amendments also would not lead to any reduction in monitoring costs for units that formerly participated in the NBTP under states' SIPs but that are not large EGUs or large non-EGU boilers or turbines subject to the existing NO_X SIP Call requirement at § 51.121(i)(4),[55] because the existing NO_X SIP Call regulations do not prevent states from revising their SIPs to end Part 75 monitoring requirements for these sources even without the proposed amendments.

V. Request for Comment

EPA requests comment on the proposed amendment discussed in section III.A. to revise the provision at 40 CFR 51.121(i)(4) to allow states to establish monitoring requirements for large EGUs and large non-EGU boilers and turbines in their SIPs other than Part 75 monitoring requirements.

EPA believes the proposed amendments discussed in sections III.B. through III.F., if finalized, would not substantively alter existing regulatory requirements, and EPA is not reopening the provisions discussed in these sections (or any related provisions) for substantive comment. With respect to these proposed amendments, EPA requests and will accept comment solely on whether the provisions proposed for removal as obsolete in fact are obsolete and on whether the proposed clarifications in fact achieve clarification.

EPA is expressly not reopening for comment any provisions of the existing NO_X SIP Call regulations except the provisions that are proposed to be amended as discussed in section III of this proposal.[56]

[55] According to EPA's records, currently there are approximately 130 such units, of which approximately 110 units already use non-CEMS methodologies under Part 75.

[56] Regulatory findings and requirements that EPA is not proposing to substantively amend and that are not being reopened for substantive comment include (but are not limited to) the findings of good neighbor obligations with respect to the 1979 1-hour ozone NAAQS, the requirements for SIPs to contain control measures addressing these obligations, the final NO_X budgets, the requirement for enforceable limits on seasonal NO_X mass emissions for large EGUs and large non-EGUs where states have included control measures for these types of sources in their SIPs, the requirement for states to adopt replacement control measures into their SIPs to achieve the emissions reductions formerly projected to be achieved by the NBTP, and the general requirements for enforceability and for monitoring of the status of compliance with the control measures adopted.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. This proposed rule is expected to provide meaningful burden reduction by allowing states to establish lower-cost monitoring requirements in their SIPs for some sources as alternatives to Part 75 monitoring requirements. However, because states, not EPA, would decide whether to revise the monitoring requirements in their SIPs and because EPA lacks complete information on the remaining monitoring requirements that the sources would face, EPA cannot currently predict the amount of monitoring cost reductions that would occur if this proposed rule is finalized. A qualitative discussion of the possible monitoring cost reductions can be found in EPA's analysis of the potential impacts associated with this action in section IV.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0445. However, to reflect the proposed amendment allowing states to establish potentially lower-cost monitoring requirements for some sources as alternatives to the current Part 75 monitoring requirements, EPA is submitting an information collection request (ICR) renewal to OMB. The ICR document prepared by EPA, which has been assigned EPA ICR number 1857.08, can be found in the docket for this proposed action. Like the current ICR, the ICR renewal reflects the information collection burden and costs associated with Part 75 monitoring requirements for sources that are subject to Part 75 monitoring requirements under the SIP revisions addressing states' NO_X SIP Call obligations and that are not subject to Part 75 monitoring requirements under another program (*i.e.,* the Acid Rain Program or a CSAPR trading program). The ICR renewal is generally unchanged from the current ICR except that the renewal reflects projected decreases in the numbers of sources that would perform Part 75 monitoring for NO_X SIP Call purposes based on an assumption (made only for purposes of estimating information collection burden and costs for the ICR renewal) that, over the course of the 3-year renewal period, some states will revise their SIPs to replace Part 75 monitoring requirements for some sources with lower-cost monitoring requirements. As under the current ICR, all information collected from sources under the ICR renewal will be treated as public information.

Respondents/affected entities: Fossil fuel-fired boilers and stationary combustion turbines that have heat input capacities greater than 250 mmBtu/hr or serve electricity generators with nameplate capacities greater than 25 MW and that are not subject to Part 75 monitoring requirements under another program.

Respondents' obligation to respond: Mandatory if elected by the state (40 CFR 51.121(i)(4) as proposed to be amended).

Estimated number of respondents: 340 (average over 2019–2021 renewal period).

Frequency of response: Quarterly, occasionally.

Total estimated burden: 131,945 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $19,143,004 (per year), includes $8,256,087 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning

the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 29, 2018. EPA will respond to any ICR-related comments in the final rule.

D. 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 does not directly regulate any entity, but would simply allow states to establish potentially lower-cost monitoring requirements for some sources and generally streamline existing regulations. EPA has therefore concluded that this action will either relieve or have no net regulatory burden for all affected small entities.

E. 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 would simply allow states to establish potentially lower-cost monitoring requirements for some sources and generally streamline existing regulations.

F. 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 would simply allow states to establish potentially lower-cost monitoring requirements for some sources and generally streamline existing regulations.

G. 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 would simply allow states to establish potentially lower-cost monitoring requirements for some sources and generally streamline existing regulations. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 would simply allow states to establish potentially lower-cost monitoring requirements for some sources and generally streamline existing regulations.

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

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

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

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

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 would simply allow states to establish potentially lower-cost monitoring requirements for some sources and generally streamline existing regulations. Consistent with Executive Order 12898 and EPA's environmental justice policies, EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing the original NO_X SIP Call. The process and results of that consideration are described in the Regulatory Impact Analysis for the NO_X SIP Call.

List of Subjects

40 CFR Part 51

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

40 CFR Part 52

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

Dated: September 13, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, parts 51 and 52 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—Control Strategy

§ 51.121 [Amended]

■ 2. Section 51.121 is amended by:
■ a. Revising the section heading;
■ b. Removing and reserving paragraph (a)(2);
■ c. Revising paragraph (a)(3);
■ d. In paragraph (b)(1) introductory text, removing the text ''section, the'' and adding in its place the text ''section, each'';
■ e. In paragraph (b)(1)(i), adding the word ''applicable'' before the word ''budget'', and removing the text ''(except as provided in paragraph (b)(2) of this section),'' and adding in its place a semicolon '';'';
■ f. In paragraph (b)(1)(ii), removing the period and adding in its place the text ''; and'';
■ g. Removing and reserving paragraph (b)(2);
■ h. In paragraph (c)(1), removing the text ''With respect to the 1-hour ozone NAAQS:'';
■ i. In paragraph (c)(2), removing the text ''With respect to the 1-hour ozone NAAQS, the portions of Missouri, Michigan, and Alabama'' and adding in

its place the text ''The portions of Alabama, Michigan, and Missouri'';
■ j. Removing and reserving paragraph (d);
■ k. Revising paragraph (e)(2)(i);
■ l. In paragraph (e)(2)(ii)(B), removing the text ''De Kalb,'' and adding in its place the text ''DeKalb,'';
■ m. In paragraph (e)(2)(ii)(E), removing the text ''St. Genevieve,'', and after the text ''St. Louis City,'' adding the text ''Ste. Genevieve,'';
■ n. Removing paragraphs (e)(3), (e)(4), and (e)(5);
■ o. In paragraph (f)(2)(i)(B), removing the text ''mass NO_X'' and adding in its place the text ''NO_X mass'';
■ p. In paragraph (f)(2)(ii), removing the text ''(b)(1) (i)'' and adding in its place the text ''(b)(1)(i)'';
■ q. In paragraph (g)(2)(i), removing the text ''as set forth for the State in paragraph (g)(2)(ii) of this section,'';
■ r. Removing and reserving paragraph (g)(2)(ii);
■ s. In paragraphs (h), (i)(2), and (i)(3), removing the words ''of this part'';
■ t. Revising paragraphs (i)(4) and (i)(5);
■ u. In paragraphs (l)(1), (l)(2), and (m), removing the words ''of this part'';
■ v. In paragraph (n), removing the text ''§ 52.31(c) of this part'' and adding in its place the text ''40 CFR 52.31(c)'', and removing the text ''§ 52.31 of this part.'' and adding in its place the text ''40 CFR 52.31.'';
■ w. In paragraph (o), removing the words ''of this part'';
■ x. Removing and reserving paragraphs (p) and (q); and
■ y. Revising paragraph (r).

The revisions read as follows:

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

(a) * * *

(3)(i) For purposes of this section, the term ''Phase I SIP submission'' means a SIP revision submitted by a State on or before October 30, 2000 in compliance with paragraph (b)(1)(ii) of this section to limit projected NO_X emissions from sources in the relevant portion or all of the State, as applicable, to no more than the State's Phase I NO_X budget under paragraph (e) of this section.

(ii) For purposes of this section, the term ''Phase II SIP submission'' means a SIP revision submitted by a State in compliance with paragraph (b)(1)(ii) of this section to limit projected NO_X emissions from sources in the relevant portion or all of the State, as applicable, to no more than the State's final NO_X budget under paragraph (e) of this section.

* * * * *

(e) * * *

(2)(i) The State-by-State amounts of the Phase I and final NO_X budgets, expressed in tons, are listed in Table 1 to Paragraph (e)(2)(i)—State NO_X Budgets

TABLE 1 TO PARAGRAPH (e)(2)(i)—STATE NO_X BUDGETS

State	Phase I budget	Final budget
Alabama	124,795	119,827
Connecticut	42,891	42,850
Delaware	23,522	22,862
District of Columbia	6,658	6,657
Illinois	278,146	271,091
Indiana	234,625	230,381
Kentucky	165,075	162,519
Maryland	82,727	81,947
Massachusetts	85,871	84,848
Michigan	191,941	190,908
Missouri	.....	61,406
New Jersey	95,882	96,876
New York	241,981	240,322
North Carolina	171,332	165,306
Ohio	252,282	249,541
Pennsylvania	268,158	257,928
Rhode Island	9,570	9,378
South Carolina	127,756	123,496
Tennessee	201,163	198,286
Virginia	186,689	180,521
West Virginia	85,045	83,921

* * * * *

(i) * * *

(4) If the revision contains measures to control fossil fuel-fired NO_X 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, then the revision may require some or all such sources to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75, subpart H, provided that nothing in this section creates any exception to any requirements of 40 CFR part 75 that may apply to such a source under any other legal authority. A State requiring such compliance authorizes the Administrator to assist the State in implementing the revision by carrying out the functions of the Administrator under such part.

(5) For purposes of paragraph (i)(4) of this section, the term ''fossil fuel-fired'' has the meaning set forth in paragraph (f)(3) of this section.

* * * * *

(r)(1) Notwithstanding any provisions of subparts A through I of 40 CFR part 96 and any State's SIP to the contrary, with regard to any ozone season that occurs after September 30, 2008, the Administrator will not carry out any of the functions set forth for the Administrator in subparts A through I of 40 CFR part 96 or in any emissions trading program provisions in a State's SIP approved under this section.

(2) Except as provided in 40 CFR 52.38(b)(10)(ii), a State whose SIP is approved as meeting the requirements of this section and that includes or included an emissions trading program approved under this section must revise the SIP to adopt control measures that satisfy the same portion of the State's NO_X emissions reduction requirements under this section as the State projected

such emissions trading program would satisfy.

§ 51.122 [Amended]

■ 3. Section 51.122 is amended by:
■ a. In paragraph (c)(1)(ii), removing the text ''pursuant to a trading program approved under § 51.121(p) or''; and
■ b. In paragraph (e), italicizing the heading ''Approval of ozone season calculation by EPA.''.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 4. The authority citation for part 52 continues to read as follows:

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

Subpart A—General Provisions

§ 52.38 [Amended]

■ 5. In § 52.38, paragraphs (b)(8)(ii), (b)(8)(iii)(A)(*2*), (b)(9)(ii), and (b)(9)(iii)(A)(*2*) are amended by removing the text ''§ 51.121(p)'' and adding in its place the text ''§ 51.121''.

[FR Doc. 2018–20858 Filed 9–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0595; A–1–FRL–9984–00—Region 1]

Air Plan Approval; New Hampshire; Transport Element for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, with respect to the 2010 sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). This action proposes to approve New Hampshire's demonstration that the State is meeting its obligations regarding the transport of SO_2 emissions into other states.

DATES: Written comments must be received on or before October 29, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0595 at *https://www.regulations.gov,* or via email to *biton.leiran@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Leiran Biton, Air Permits, Toxics and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. (617) 918–1267, email *biton.leiran@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On June 22, 2010 (75 FR 35520), EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within 3 years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.[1] These SIPs, which EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. A detailed history, interpretation, and rationale of these SIPs and their requirements can be found, among other citations, in EPA's May 13, 2014 (79 FR 27241) proposed rule titled, ''Approval and Promulgation of Air Quality Implementation Plans; Illinois, Michigan, Minnesota, Wisconsin; Infrastructure SIP requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' Section 110(a) of the CAA imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances, and may also vary depending upon what provisions the state's approved SIP already contains.

[1] This requirement applies to both primary and secondary NAAQS, but EPA's approval in this notice applies only to the 2010 primary NAAQS for SO_2 because EPA did not establish in 2010 a new secondary NAAQS for SO_2.