

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

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

(i) The nitrogen oxides (NO_x) emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures throughout all portions of the State that are within the Northeast Ozone Transport Region created under section 184(a) of the Clean Air Act as of December 19, 1994; and

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

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

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

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

[60 FR 4736, Jan. 24, 1995]

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

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

tially inadequate to comply with the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA), 42 U.S.C. 7410(a)(2)(D)(i)(I), because the SIP does not include adequate provisions to prohibit sources and other activities from emitting nitrogen oxides (“NO_x”) in amounts that will contribute significantly to non-attainment in one or more other States with respect to the 1-hour ozone national ambient air quality standards (NAAQS). Each of the jurisdictions listed in paragraph (c) of this section must submit to EPA a SIP revision that cures the inadequacy.

(2) [Reserved]

(3) As used in this section, these terms shall have the following meanings:

Nitrogen oxides or *NO_x* means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

Ozone season means the period from May 1 to September 30 of a year.

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 during the ozone season from sources in the relevant portion or all of the State, as applicable, to no more than the State’s Phase I NO_x ozone season budget under paragraph (e) of this section.

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 during the ozone season from sources in the relevant portion or all of the State, as applicable, to no more than the State’s final NO_x ozone season budget under paragraph (e) of this section.

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

(i) Contains control measures adequate to prohibit emissions of NO_x that

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would otherwise be projected, in accordance with paragraph (g) of this section, to cause the jurisdiction's overall NO_x emissions during the ozone season to be in excess of the applicable NO_x ozone season budget for that jurisdiction described in paragraph (e) of this section;

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

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

(2) [Reserved]

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

(1) Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

(2) The portions of Alabama, Michigan, and Missouri within the fine grid of the OTAG modeling domain. The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner, 69.5 degrees West longitude and 44 degrees North latitude.

(d)(1) [Reserved]

(2) Each SIP submission under this section must comply with §51.103 (regarding submission of plans).

(e)(1) Except as provided in paragraph (e)(2)(ii) of this section, the NO_x ozone season budget for a State listed in paragraph (c) of this section is defined as the total amount of NO_x emissions from all sources in that State, as indicated in paragraph (e)(2)(i) of this section with respect to that State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

(2)(i) The State-by-State amounts of the Phase I and final NO_x ozone season budgets, expressed in tons, are listed in Table 1 to this paragraph (e)(2)(i):

TABLE 1 TO PARAGRAPH (e)(2)(i)—STATE NO_x OZONE SEASON BUDGETS

State	Phase I NO _x ozone season budget (2004–2006)	Final NO _x ozone season budget (2007 and thereafter)
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

(ii) (A) For purposes of paragraph (e)(2)(i) of this section, in the case of each State listed in paragraphs (e)(2)(ii)(B) through (E) of this section, the NO_x ozone season budget is defined as the total amount of NO_x emissions from all sources in the specified counties in that State, as indicated in paragraph (e)(2)(i) of this section with respect to the State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

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

(C) [Reserved]

(D) In the case of Michigan, the counties are: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Ingham,

Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ottawa, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, and Wayne.

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

(f) Each SIP revision must set forth control measures to meet the NO_x ozone season budget in accordance with paragraph (b)(1)(i) of this section, which include the following:

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

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2) Should a State elect to impose control measures on fossil fuel-fired NO_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 as a means of meeting its NO_x ozone season budget, then those measures must:

(i)(A) Impose a NO_x mass emissions cap on each source;

(B) Impose a NO_x emissions rate limit on each source and assume maximum operating capacity for every such source for purposes of estimating NO_x mass emissions; or

(C) Impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than options in paragraph (f)(2)(i)(A) or (B) of this section that the State will comply with

its NO_x ozone season budget in the 2007 ozone season; and

(ii) Impose enforceable mechanisms, in accordance with paragraphs (b)(1)(i) and (ii) of this section, to assure that collectively all such sources, including new or modified units, will not exceed in the 2007 ozone season the total NO_x emissions projected for such sources by the State pursuant to paragraph (g) of this section.

(3) For purposes of paragraph (f)(2) of this section, the term “fossil fuel-fired” means, with regard to a NO_x source:

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

(ii) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the NO_x source shall be “fossil fuel-fired” as of the date, during such year, on which the NO_x source begins combusting fossil fuel.

(g)(1) Each SIP revision must demonstrate that the control measures contained in it are adequate to provide for the timely compliance with the State’s NO_x ozone season budget during the 2007 ozone season.

(2) The demonstration must include the following:

(i) Each revision must contain a detailed baseline inventory of NO_x mass emissions during the ozone season from the following sources in the year 2007, absent the control measures specified in the SIP submission: electric generating units (EGU), non-electric generating units (non-EGU), area, nonroad and highway sources. The State must use the same baseline emissions inventory that EPA used in calculating the State’s NO_x ozone season budget, except that EPA may direct the State to use different baseline inventory information if the State fails to certify that it has implemented all of the control

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measures assumed in developing the baseline inventory.

(ii) [Reserved]

(iii) Each revision must contain a summary of NO_x mass emissions during the ozone season in 2007 projected to result from implementation of each of the control measures specified in the SIP submission and from all NO_x sources together following implementation of all such control measures, compared to the baseline 2007 NO_x emissions inventory for the State described in paragraph (g)(2)(i) of this section. The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2007 NO_x emissions that will be achieved from the implementation of the new control measures compared to the baseline emissions inventory.

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

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

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to meet the NO_x ozone season budget. Specifically, the revision must meet the following requirements:

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

(i) Information on the amount of NO_x emissions from the stationary sources; and

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

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

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

(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 full set of monitoring, recordkeeping, and reporting provisions of 40 CFR part 75, subpart H. 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.

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

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State’s NO_x ozone season budget specified in paragraph (e) of this section;

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

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

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

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

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under section 114 of the CAA, 42 U.S.C. 7414.

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

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

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

(n) For purposes of the SIP revisions required by this section, EPA may make a finding as applicable under section 179(a)(1)–(4) of the CAA, 42 U.S.C. 7509(a)(1)–(4), starting the sanctions process set forth in section 179(a) of the CAA. Any such finding will be deemed a finding under 40 CFR 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in 40 CFR 52.31.

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

(p)–(q) [Reserved]

(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)(13)(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.

[63 FR 57491, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998; 64 FR 26305, May 14, 1999; 65 FR 11230, Mar. 2, 2000; 65 FR 56251, Sept. 18, 2000; 69 FR 21642, Apr. 21, 2004; 70 FR 25317, May 12, 2005; 70 FR 51597, Aug. 31, 2005; 73 FR 21538, Apr. 22, 2008; 76 FR 48353, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014; 84 FR 8442, Mar. 8, 2019; 86 FR 23164, Apr. 30, 2021]

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_x emissions.

(a) As used in this section, words and terms shall have the meanings set forth in § 51.50. In addition, the following terms shall apply to this section:

(1) Ozone season emissions means emissions during the period from May 1 through September 30 of a year.

(2) Summer day emissions means an average day's emissions for a typical summer work weekday. The state will select the particular month(s) in summer and the day(s) in the work week to be represented.

(b) For its transport SIP revision under § 51.121, each state must submit to EPA NO_x emissions data as described in this section.

(c) Each revision must provide for periodic reporting by the state of NO_x emissions data to demonstrate whether the state's emissions are consistent with the projections contained in its approved SIP submission.

(1) For the every-year reporting cycle, each revision must provide for reporting of NO_x emissions data every year as follows:

(i) The state must report to EPA emissions data from all NO_x sources within the state for which the state specified control measures in its SIP submission under § 51.121(g), including all sources for which the state has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the state developed in accordance with § 51.121(g). The state must also report to EPA ozone season emissions of NO_x and summer day emissions of NO_x from any point, nonpoint, onroad mobile, or nonroad mobile source for which the state specified control measures in its SIP submission under § 51.121(g).

(ii) If sources report NO_x emissions data to EPA for a given year pursuant to the monitoring and reporting requirements of 40 CFR part 75, then the state need not provide an every-year cycle report to EPA for such sources.

(2) For the 3-year cycle reporting, each plan must provide for triennial (*i.e.*, every third year) reporting of NO_x emissions data from all sources within the state. The state must also report to