applications. The validity of a default IPT ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not be subject to additional public comment with regard to its numerical value each time that ratio is utilized by individual permit applicants.

On the other hand, default ratios that are not included in a state regulation and SIP, and, therefore, are not subject to the EPA's approval, may be replaced more rapidly in situations where the ratio is no longer valid, *e.g.*, as a result of a periodic review. An air agency can replace such a ratio with a revised value that will not have to be processed through rulemaking and a plan revision. Also, if an air agency determines through a periodic review that an existing default ratio is no longer valid and must be revised, the air agency may decide not to revise it but to rely solely on case-specific permit ratios to continue implementing IPT provided that the SIP contains the necessary authority to implement case-specific ratios as part of the NNSR program for ozone. Unlike the default IPT ratios, case-specific IPT ratios will not require periodic review because the ratio used for each individual permit will be based on the most current data representing the ozone chemistry for the area of concern.

This final rule does not discourage or preclude an air agency desiring EPA approval from electing to either submit numerical default IPT ratio(s) to EPA for review and approval into its SIP, seek EPA approval of any case-specific IPT ratio or to simply seek consultation with the EPA on the development of any IPT ratio for ozone.

For any state that lacks an approved NNSR program for ozone, the state may issue an NNSR permit pursuant to the NNSR requirements for ozone contained in 40 CFR part 51 Appendix S, which includes an IPT program. The final rule provides that the IPT program under Appendix S may be implemented only by using case-specific IPT ratios. In addition, the final rule includes a provision in Appendix S that requires permit applicants to include along with the submittal of the proposed case-specific ratio information pertaining to the development of that ratio. Moreover, each case-specific permit IPT ratio would not require EPA approval but only the approval of the air agency.

The EPA is including a revised final TGD in the docket for this rulemaking. The purpose of this TGD is to provide air agencies and source owners or operators, where applicable, with guidance on a technical approach to determine ozone impacts from precursor emissions for a specific nonattainment area or for case-specific determinations. The TGD provides a framework and associated general methodology to apply existing or new empirical relationships between ground level ozone concentrations and the two precursors—NO_X emissions and VOC emissions—to develop the required IPT ratios.[43] Air agencies may use existing modeling analyses or generate their own modeling analyses to provide the basis for the development of IPT ratios.[44]

In addition, recent changes to the EPA's Guideline for Air Quality Models, published as Appendix W to 40 CFR part 51, provides greater clarity regarding the use of chemical transport modeling to estimate single-source ozone impacts from precursors. Appendix W provides guidelines for area-specific assessments of precursor emissions impacts on ozone and these guidelines may also support the development of case-specific IPT ratios or area-specific IPT ratios for ozone precursors.

Finally, the final rule attempts to strike a balance between providing flexibility for the offset requirement in NNSR permitting and compliance with the CAA's air quality protections. While EPA approval of ratios is no longer required, the EPA believes that the SIP requirements for air agencies to comply with the criteria for development of default IPT ratios and to conduct periodic reviews of each default ratio, along with the opportunity for the EPA to review the application of a ratio for a specific permit during the public comment period, afford adequate safeguards. In particular, the mandatory periodic review conducted by the air agency will ensure that each area-specific ratio either continues to adequately reflect the correct relationship between VOC and NO_X emissions with respect to the formation of ground level ozone in a particular ozone nonattainment area or will result in such ratio being eliminated (and revised if so desired).

3. Comments and Responses

Comment: Six commenters expressed concerns about the administrative burden associated with the proposed requirement for the EPA to approve all IPT ratios for ozone. These commenters believed that the EPA's approval of the SIP containing the authority to use IPT and the methodology for developing an IPT ratio would be sufficient. The commenters claimed that the EPA's approval of SIPs containing rules authorizing IPT is sufficient for compliance with the CAA requirements for EPA approval of SIPs, while the specific ratios applied to IPT should be a matter of NNSR permitting. The commenters stated that the CAA assigns the EPA a substantive role in approving SIPs but generally reserves NNSR permitting decisions to states. They thereby concluded that the determination of specific IPT ratios should be considered the province of the air agency and should not require EPA approval. One commenter, while generally opposing the proposed IPT provisions, argued that EPA approval of ratios would provide minimal, if any, benefit and that the EPA lacked the resources sufficient for such a process to be successful.

Response: The EPA has considered the commenters' concerns about the proposed requirement for EPA approval of all IPT ratios for ozone. As a result, we have concluded that it would be appropriate to eliminate the proposed EPA approval requirement as part of the final rule while retaining the following safeguards: The final rule requires the SIP to include (1) the authority to implement IPT; (2) a description of the air quality model(s) that may be used to develop any default ratio; and (3) a description of the approach that the air agency will use to develop any default IPT ratio, which will show that such ratio(s) provide an equivalent or greater ozone air quality benefit in the applicable ozone nonattainment area. Accordingly, the final rule does not require EPA approval of any IPT ratio. The EPA agrees that the process of EPA approval could lengthen the time required for SIP approval (in the case of default IPT ratios) and for individual permit processing (in the case of case-specific IPT ratios).

However, the EPA also believes that SIP approved default IPT ratios have great potential in burden reduction for both proposed projects as well as the state through an initial up-front effort in providing the technical demonstration supporting the desired default ratio with an equivalent or greater air quality benefit for such ratio's use in NNSR permitting. A SIP approved default IPT ratio could be used to provide a greater degree of certainty for projects each time it is used in an NNSR permit, since it would be presumed to be appropriate for each individual NNSR permit in that nonattainment area. To avail this greater

[43] Please refer to the TGD included in this final rule docket and the section of the Response to Comments document related to the proposed TGD for further information.

[44] The EPA has not added any regulatory provisions in the NNSR regulations to require permitting authorities to use the data or methods described in the TGD.

certainty of default IPT ratios, an air agency could choose to obtain formal approval of any default ratio by including it in its SIP submission.

The EPA recommends that air agencies consult with the EPA and refer to the TGD for assistance in developing the technical demonstration supporting IPT as providing an equivalent or greater air quality benefit in the nonattainment area, whether implementing a case-specific or area-specific default ratio. The EPA also offers direct assistance to air agencies in the development of default IPT ratios upon request.

Comment: Seven commenters advocated that the EPA take greater responsibility for the development of default IPT ratios. Five of the seven specifically recommended that the EPA provide the area-specific IPT ratios for ozone nonattainment areas to the air agencies. Two of the commenters, supporting a greater EPA responsibility, called upon the EPA to provide assistance to the states in developing default IPT ratios. All seven commenters generally agreed that the process to develop default IPT ratios is too burdensome for the states to conduct on their own. A state air agency commenter recommended that the EPA provide a mechanism to establish an alternative ratio "that does not rely upon overly burdensome modeling exercises." The same commenter suggested that the EPA could instead rely upon a ratio of NO_X and VOC inventories rather than photochemical modeling.

Response: While the EPA continues to support the concept of a default ratio for a particular ozone nonattainment area, primarily for resource reasons it is not feasible at this time for the EPA to assume the responsibility for establishing ratios for all ozone nonattainment areas across the country. Additionally, it is not clear whether all states will adopt the discretionary IPT provisions or whether they will prefer default or case-specific IPT ratios. Taking into account these considerations, and the considerable resources required to conduct research and data analyses to establish IPT ratios for every nonattainment area, the EPA believes that it is more appropriate for states to assume the responsibility for developing IPT ratios for nonattainment areas if they decide to implement the voluntary IPT program.

Concerning the commenters' recommendation for a mechanism for an alternative ratio that can be derived without reliance on a modeling demonstration, the EPA is not aware of an alternate methodology to show equivalent or greater ozone air quality benefit in a nonattainment area, which is an essential component of an acceptable ozone IPT ratio, nor has the commenter provided such methodology for consideration. Moreover, a ratio that relied upon NO_X and VOC emissions inventories, as recommended by one commenter, would not be based on an air quality relationship between the two ozone precursors and would lack elements of the required technical demonstration to substantiate the required equivalent or greater air quality benefit for the ozone nonattainment area than a reduction (offset) of the emitted precursor would achieve.

Comment: One commenter recommended the EPA not allow case-specific IPT ratios because such ratios could not be set in advance of the permitting process, although permit applicants need to know the appropriate amount of the precursor offsets that would be required in order to decide whether to apply for an NNSR permit.

Response: Any major NNSR permit applicant would be required to do preliminary analysis to determine the Lowest Achievable Emissions Rate (LAER) and the amount of emissions offsets required. The EPA recognizes the importance of an applicant of knowing, in advance of applying for a permit to construct, the amount of emissions reductions that will be needed to satisfy the NNSR offset requirement. If a state has chosen to provide a default ratio, then that information is readily available to the applicant when contemplating a proposed construction project. If, however, a state also allows case-specific IPT ratios and the applicant believes that a lower, less conservative ratio may be more appropriate for the proposed project at a particular location within a nonattainment area, then the applicant may elect to propose in advance of the submittal of a permit application a case-specific IPT ratio that would apply only to that source project. Thus, the case-specific IPT ratio remains a valid option for permit applicants that find it useful.

Comment: Some commenters expressed concern that the final rule would only allow one approach for developing the required IPT ratio. One commenter was concerned that states with more than one ozone nonattainment area would be required to select one approach to apply to all nonattainment areas within the state.

Response: These commenters appear to have misunderstood the EPA's proposal concerning the different options described for states to consider in developing or revising IPT ratios for NNSR permitting. The EPA did not intend to limit the flexibility afforded to states with respect to how they can implement ozone IPT provisions (which includes the approach indicated by these commenters). As previously explained, the EPA proposed three options for states that choose for implementing an IPT program for ozone: (1) Procedures to develop an area-wide IPT ratio; (2) procedures to allow case-specific ozone IPT ratios applicable to single permits; or (3) a combination of the first two options with an area-specific default ratio that can be replaced by a case-specific ratio as proposed by the applicant. The EPA's intent is to maximize flexibility so that air agencies can choose a different option for each nonattainment area, rather than choose one option to apply at the statewide level, which means that two nonattainment areas in the same state could apply different options for ozone IPT ratios. The IPT program for ozone is not a mandatory program for air agencies to adopt. However, air agencies that choose to use any form of IPT program for ozone using the options provided in the final rule will need to revise their SIPs to ensure that their NNSR rules satisfy the minimum requirements contained in the final rule.

Comment: Twelve commenters opposed the proposed requirement for a 3-year periodic review of any area-wide IPT ratios. Several of these commenters opposed any review at all unless there is a specific basis (*e.g.*, a new or revised attainment demonstration) to justify the need for review. Most of the remaining commenters recommended that a longer review period (generally 5–10 years) would be more appropriate than the proposed 3-year frequency. The commenters generally indicated that the proposed 3-year review would be overly burdensome and likely not reflect appreciable inventory changes. The commenters further noted that updating an ozone IPT ratio every 3 years after initial SIP approval requires months of modeling along with many weeks to follow public notice requirements and other applicable state requirements.

Response: The EPA considered the comments concerning the proposed periodic review and the 3-year review cycle and has concluded that it is appropriate to make certain changes to the proposed approach. Specifically, the requirement for a periodic review of any default ratio is being retained; however, such reviews will be required every 5 years rather than the proposed 3 years. The EPA notes that the requirement for periodic review does not apply to case-specific IPT ratios established for individual permits since each such ratio will be based on the relevant technical

information applicable to that particular permitting situation. The EPA disagrees with those commenters recommending that IPT review only occur at the states' discretion. The EPA is establishing a periodic review requirement for area-wide IPT ratios based on a 5-year review cycle to address the potential for changes in atmospheric conditions in an area, and to ensure that the requirement for equivalent or greater ozone benefits continues to be satisfied.

The increase in the length of the review was supported by commenters in response to the proposal. Commenters supporting a review period specifically noted that the 3-year period was too short. Many of the commenters noted the procedural challenges in their own rulemaking process and that other contributing elements to the nonattainment area air shed do not change significantly enough to justify the effort of the review.[45] They concluded that a 3-year review cycle would be too burdensome to adopt as a provision. Further, recent research suggests ozone formation in an area changes over time but is typically fairly consistent in a given 3 to 5-year period.[46] Therefore, the EPA has decided to increase the proposed 3-year review period to a 5-year review period in order to provide air agencies a more reasonable period of time to satisfy the requirement and to afford sufficient time to reflect inventory changes. It is important to note that the final rule would also not require EPA approval of periodically reviewed ratios that are not included in regulations and the SIP. This will enable an air agency to effectuate an updated default ratio more quickly, but such a default ratio will be subject to public comment as part of the NNSR permitting process. However, similar to the development of the initial default ratio, the EPA encourages air agencies to both work with the EPA in the development of a revised default IPT ratio for a particular ozone nonattainment area and notify the EPA after such a ratio has been developed.

Comment: Five commenters advocated that the EPA provide a reasonable transition period for any pre-existing IPT programs that a state may be currently implementing. Some of these commenters explicitly recommended that states be allowed to continue the implementation of pre-existing ozone IPT programs without including revised IPT provisions as part of any other required revisions to the ozone NNSR regulations.

Response: Existing provisions in an EPA-approved SIP remain in effect until any revisions to those provisions are approved by the EPA as a revision to the SIP. Accordingly, states that already implement a SIP-approved ozone IPT program can continue to implement that approved program until the program is revised. States are required to submit a SIP revision regarding the state's NNSR program. Even if a state believes that its pre-existing IPT program is sufficient to meet the requirements established in this rulemaking, the state's SIP submittal must demonstrate this to be so by including information to support the implementation of IPT subject to the requirements of this rule. In the case of any default ratios that are already in a SIP, this includes a technical demonstration supporting an equivalent or greater ozone air quality benefit for the existing default IPT ratio, and a 5-year periodic review.

Comment: Two commenters objected to the proposed ozone IPT provisions on the grounds that allowing IPT is unlawful. One of the commenters claims the IPT provision would put human health at risk because it contributes to delays in attaining the standards. The other commenter provides a detailed argument claiming that the proposed ozone IPT provision violates the express terms of the CAA. This commenter interprets the offset requirement under CAA Section 173(c)(1), which specifically refers to an "air pollutant," to apply only to the particular precursor emitted (VOC or NO_x), rather than to the ambient air pollutant (ozone) for which the region is in nonattainment, noting that the Act establishes VOC-specific offset ratios required for ozone permitting.

Response: The EPA disagrees with the commenters' narrow interpretation of "air pollutant" under CAA Section 173(c)(1).[47] CAA section 302(g), which defines "air pollutant," provides that the term includes ". . . *any precursors to the formation of any air pollutant,* to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used." (Emphasis added).[48] Further, CAA section 109(a) directs the Administrator to promulgate NAAQS for "each air pollutant for which air quality criteria have been issued. . . ." The criteria pollutant in this context is ozone—not its precursors. Further, in accordance with CAA section 107(d)(4), the air pollutant for which the area is designated nonattainment is ozone, and there is no mention of NO_X or VOC.

While an area's attainment designation is made for the criteria air pollutant ozone, the control of ground level concentrations of ozone has occurred largely through regulation of its precursor emissions, which are NO_X and VOC. Both the CAA and the EPA's NNSR regulations identify emissions of NO_X and VOC as precursors for ozone, and, as such, NO_X and VOC are both regulated under NNSR as part of the regulation of ozone (*see* 40 CFR 51.165(a)(xxxvii)(C)(1)). Thus, when applied to ozone, the term "air pollutant" in section 173 of the Act may be read to describe both NO_X emissions and VOC emissions. The EPA, therefore, reads the Act to allow the total annual tonnage of emissions of one ozone precursor to be offset by reductions in total annual emissions of another ozone precursor (in tpy) pursuant to an IPT ratio that demonstrates that the reductions will have an equivalent or greater air quality benefit with respect to ground level concentrations of the ambient air pollutant ozone. Further, section 173(a)(1)(A) of the CAA requires an NNSR permitting offset to be consistent with RFP (as defined in CAA section 171(1)). Specifically, this provision requires that the offsetting emissions reductions are such that the total allowable emissions in the area, including the proposed source or modification when the source commences operation, will be sufficiently less than the emissions from the total emissions of existing sources before the permit application, to represent RFP when considered together with the provisions of the nonattainment SIP. Section 171(1) of the CAA defines RFP as "annual incremental reductions in emissions of the relevant air pollutant . . . for the purposes of the applicable NAAQS by the applicable date." This requirement serves as insurance that IPT offsets must not interfere with NAAQS attainment for ozone.

[45] See Section VIII.B of the Response to Comments document for further information.

[46] Evaluating a Space-Based Indicator of Surface Ozone-NO_x-VOC Sensitivity Over Midlatitude Source Regions and Application to Decadal Trends. Xiaomeng Jin, Arlene M. Fiore, Lee T. Murray, Lukas C. Valin, Lok N. Lamsal, Bryan Duncan, K. Folkert Boersma, Isabelle De Smedt, Gonzalo Gonzalez Abad, Kelly Chance, and Gail S. Tonnesen, Journal of Geophysical Research: Atmospheres, October 5, 2017.

[47] Section 173(c)(1) of the CAA states that the NNSR offset requirement shall "assure that the total tonnage of increased emissions of the *air pollutant* from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such *air pollutant* from the same or other sources in the area." (Emphases added.)

[48] *See* 57 FR 55620, November 25, 1992, at page 55621 and 55624 (PSD and NNSR Applicability), and 1991 Memo "New Source Review Program Transitional Guidance" at page 5.

Additionally, the commenters note that the Act establishes VOC-specific offset ratios required for ozone permitting. The IPT provisions at issue in this rulemaking are for the NNSR permitting offset requirement for ozone and stem from the CAA section 173(c) requirement to offset "increased emissions of any air pollutant" rather than a requirement that specifically identifies the precursor at issue.[49] Of note, the EPA is not suggesting that a VOC-specific SIP requirement where Congress has not permitted NO_X substitution can be satisfied by utilizing either precursor interchangeably. Specifically, in CAA section 182(b)(1), for newly listed Moderate and higher classified nonattainment areas, there is a requirement that a reduction in VOC emissions of 15 percent be achieved. In the case of a nonattainment area (Moderate and higher classified) that has not previously achieved the 15 percent VOC ROP reduction and is seeking to utilize NNSR permitting as one of the methods by which it will achieve the required VOC reductions, the state is not allowed to utilize IPT in its NNSR program.

Comment: One commenter argued that the IPT provision for ozone violates the CAA's anti-backsliding requirements because "[a] rule that allows a new major source to be constructed and emit increased levels of a pollutant that would have been barred under prior rules is by definition less stringent." Additionally, the commenter asserted that the IPT provision would put human health at risk and fails to assure equivalent or greater ozone reduction benefit.

Response: The commenter did not identify any specific CAA requirements in their comments with regard to anti-backsliding. Based on the commenter's statement that the proposed rulemaking "unlawfully and arbitrarily authorize[s] controls for that pollutant that are less stringent than required under the pre-existing NAAQS," the commenter appears to be referencing the EPA's application of section 172(e); however, this provision applies to relaxation of a prior NAAQS. The EPA is not relaxing a prior NAAQS in this action, and thus section 172(e) does not apply.

As the EPA has stated, the IPT approach outlined in the proposal and being finalized here represents the longstanding policy of the EPA.[50] Therefore, it is not "less stringent" than the agency's prior approach. Moreover, the commenter provided no analysis or support for the assertion that this rule would allow "a new major source to be constructed and emit increased levels of a pollutant that would have been barred under prior rules."

The EPA also disagrees with commenter's claims that the proposed rulemaking would put human health at risk and that IPT fails to assure equivalent or greater ozone reduction benefits. In both the proposed and final rule, the use of any IPT ratio is predicated on a demonstration that assures exactly that. *See, e.g.*, 40 CFR 51.165(a)(11)(i)(B)(*I*) and (C). The commenter claimed that the "proposal nowhere finds or demonstrates that any specific trading ratios will be sufficient to assure equivalent or greater ozone reductions in any particular ozone nonattainment areas, nor does it specify with precision the methods and supporting data required to make such a demonstration." These critiques are premature and would only be germane if the commenter sought to dispute the approval of a specific IPT ratio. As discussed earlier in response to comments requesting that the EPA directly develop ratios for each nonattainment area as part of this final rule, the EPA maintains that we cannot, and will not endeavor to, identify all possible specific trading ratios for all areas. Rather, the EPA has defined three different procedural approaches for implementing IPT and provided technical guidance to assist air agencies (and permit applicants, where applicable) in the establishment of such ratios.

Furthermore, the ability of an IPT ratio to assure equivalent or greater ozone reductions has been acknowledged by Congress. CAA section 182(c)(2)(C) permits air agencies to demonstrate that substituting NO_X emissions for VOC emissions to satisfy the VOC-specific requirements of CAA section 182(c)(2)(B) "would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOCs emission reductions required." In that context, Congress specifically authorized the substitution because it related to a VOC-specific requirement. The IPT provisions in this final rule, relate to the ambient air pollutant ozone, and, thus, as discussed previously, specific authorization to substitute precursors is not necessary as part of the section 173(c) offset requirement because, as discussed earlier, CAA section 302(g) defines "air pollutant" to include "any precursors to the formation of any air pollutant." However, section 182(c)(2)(C) is noteworthy because it formalizes Congress' acknowledgement that, contrary to the commenter's assertions, IPT can be implemented in a manner which assures equivalent or greater ozone reductions.

E. Emissions Inventory and Emissions Statement Requirements

The EPA proposed to clarify our emissions inventory and emissions statement requirements for purposes of the 2015 ozone NAAQS by adding 40 CFR 51.1315. CAA sections 182(a)(1) and 182(a)(3)(A) require states to submit emissions inventories to the EPA. To clarify these statutory requirements within the context of implementing the 2008 ozone NAAQS, the EPA added 40 CFR 51.1115 (80 FR 12264, 12314; March 6, 2015). For purposes of the 2015 ozone NAAQS, we proposed to add 40 CFR 51.1315, to clarify requirements for the emissions inventories required by CAA sections 182(a)(1) and 182(a)(3)(A). We also provided a preamble discussion in the proposed rulemaking to clarify the emissions statement requirements of 182(a)(3)(B), and are finalizing 40 CFR 51.1315 consistent with that discussion in this final rule.

1. Emissions Inventories

a. Summary of Proposal. The EPA proposed to retain our existing approach to the general emissions inventory requirements for purposes of the 2015 ozone NAAQS, as articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.[51] We also proposed revisions to point source reporting thresholds in the AERR (codified in 40 CFR 51, subpart A) to be consistent with the major source thresholds for ozone nonattainment areas.

The emissions inventory requirements for the 2008 ozone NAAQS, found at 40 CFR 51.1115, describe the criteria and timing for base year and periodic

[49] If anything, the statement in section 182(c)(2)(C) permitting NO_X substitution that "would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B)" evidences Congress's understanding that NO_X reductions, when properly calculated, can be utilized to result in equivalent ozone reductions as VOC emissions; a contention which the commenters dispute and is discussed below in addressing the commenters' "anti-backsliding" comments.

[50] *See* Louisiana; Final Rule: 67 FR 61260, September 30, 2002 (proposed at 67 FR 48090, July 23, 2002); Texas; Final Rule: 71 FR 52664, September 6, 2006 (proposed at: July 23, 2001); Mass Emissions Cap and Trade Program proposal (66 FR 38240; July 23, 2001).

[51] The preamble to the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for emissions inventories (80 FR 12289; March 6, 2015).

inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), respectively. To support the periodic emissions inventory requirement, the EPA proposed revisions to the AERR point source reporting thresholds in AERR Table 1 (40 CFR 51, subpart A, appendix A) to be consistent with the major source thresholds for ozone nonattainment areas. These reporting thresholds are in tons of potential emissions per year. The existing AERR Table 1 includes Moderate area thresholds of 100 tpy for NO_X and VOC, which are the same as the triennial thresholds for all areas. The existing AERR table also includes lower VOC thresholds for Serious, Severe and Extreme areas of 50, 25 and 10 tpy. With the proposed revision, the AERR table would be updated to also explicitly include these same Serious, Severe and Extreme area thresholds for NO_X. The same thresholds as have existed for VOC also apply for NO_X, consistent with definition of "major source" in both 40 CFR 70.2 and 40 CFR 71.2. In addition, the emission thresholds also depend on whether the source is within an OTR in accordance with CAA 184(b)(2). The EPA proposed to include in the AERR table a 50 tpy potential-to-emit (PTE) VOC threshold for sources within an OTR and a 50 tpy PTE NO_X threshold for sources both within an OTR and within a Moderate ozone nonattainment area, proposing to apply the same definition noted earlier in 40 CFR 70.2 and 40 CFR 71.2. Finally, the proposal removed the 100 tpy PTE CO threshold from the AERR tables in Appendix A for ozone nonattainment areas because there is no corresponding major source threshold for CO in the existing or proposed implementing regulations for the ozone NAAQS.

b. Final Rule. The EPA is finalizing the proposed emissions inventory requirements, with the exception of the proposed AERR Table 1 reporting threshold for NO_X sources within an OTR, as explained more fully later. In general, we are providing that air agencies may rely, when appropriate, on their 3-year cycle inventory as described by the AERR to meet the 182(a)(3)(A) periodic inventory obligations, with additional requirements for the reporting of ozone season day emissions and treatment of partial-county inventories.[52] For all of the mobile source inventories used for 2015 ozone NAAQS implementation, states should use the latest emissions models available at the time that the attainment plan inventory is developed.[53] In general, for states other than California that choose to fulfill various modeling requirements by using the latest EPA emissions model, the latest approved version of the MOtor Vehicle Emissions Simulator (MOVES) model should be used to estimate emissions from onroad and certain nonroad transportation sources. States should use the latest available planning emission inputs including, but not limited to, vehicle miles traveled, speeds, fleet mix, SIP control measures and fuels. The current version of MOVES is available at: *https://www.epa.gov/moves*. Other appropriate methods should be used to estimate emissions of nonroad sources not included in the model. For California, consult with the EPA Region 9 for information on the latest approved version of the EMFAC (EMission FACtors) model. EMFAC2014 is the most recently approved model.[54]

The EPA is finalizing the proposed updates to AERR Table 1 that explicitly include the same Serious, Severe and Extreme area thresholds for NO_X as currently exist for VOC. We are also removing the 100 tpy PTE CO threshold from Appendix A for ozone nonattainment areas, as proposed.

We are not finalizing our proposal to revise the NO_X reporting threshold for sources within an OTR from 100 tpy to 50 tpy. This revision would have aligned the NO_X reporting threshold with that for VOC sources in an OTR, which is established as 50 tpy in CAA section 184(b)(2) and in subsection 3(ii) of the definition of "major source" in 40 CFR 70.2 and 40 CFR 71.2. For nonattainment areas, CAA section 182(f)(1) applies the planning requirements for major stationary sources of VOC to NO_X sources within nonattainment areas classified Serious and higher. Major stationary sources of NO_X for nonattainment areas are thus defined by the same corresponding emissions thresholds for VOC sources under CAA sections 182(c) (Serious areas, 50 tpy), 182(d) (Severe areas, 25 tpy) and 182(e) (Extreme areas, 10 tpy). Section 184 of the CAA does not include NO_X requirements for major stationary sources of VOC in an OTR, while CAA section 184(b)(2) specifically provides that major stationary sources of VOC (*i.e.*, at least 50 tpy VOC) would be subject to requirements applicable to major stationary sources in a Moderate nonattainment area. The EPA's proposed revision of the OTR NO_X reporting threshold was intended to establish a parallel, consistent basis for emissions reporting requirements for VOC and NO_X sources in an OTR. However, after considering comments received (see later), the EPA has determined that our proposal incorrectly interpreted the interaction between CAA sections 182 and 184 as requiring a NO_X reporting threshold of 50 tpy in the OTR. CAA section 182(f) states that the *planning requirements* for ozone nonattainment areas that apply to major stationary sources of VOCs will also apply to major stationary sources of NO_X, but it does not say the major stationary source definition for VOCs (such as the 50 tpy threshold contained in 184(b)(2) for stationary sources in the OTR) shall also apply to determining major stationary sources of NO_X. Instead, section 182(f) specifically defines major stationary sources of NO_X with reference to the general definition contained in CAA section 302, which applies a 100 tpy emission threshold (*see* 42 U.S.C. 7602(j)), and the thresholds for Serious, Severe and Extreme nonattainment areas contained in CAA section 182(c), (d) and (e) (*i.e.*, 50, 25 and 10 tpy, respectively). Interpreting CAA section 182(f) as establishing a 100 tpy threshold for major stationary sources of NO_X in the OTR is consistent with the EPA's longstanding position regarding the interaction between section 182 and 184.[55] We are therefore not finalizing our proposal to revise the NO_X reporting threshold for sources within an OTR, and are retaining the existing general NO_X reporting threshold of 100 tpy. Major stationary sources within an OTR that are also located in ozone nonattainment areas classified Serious and higher would be subject to the

[52] States should consult the guidance document titled "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA–454/B–17–003, July 2017, and any subsequent updates to that guidance that the EPA may make available at: *https://www.epa.gov/air-emissions-inventories/emissions-inventory-guidance-implementation-ozone-and-particulate-matter.*

[53] Section 172(c)(3) of the CAA requires that emissions inventories be based on the most comprehensive, accurate and current information available. To do so, air agencies should use the most up-to-date method for estimating emissions.

[54] The EPA is aware that EMFAC2017 has been made available by the California Air Resources Board and is currently reviewing that model. However, EMFAC2017 should not be used for any conformity analyses until the EPA officially approves the model for that purpose.

[55] *See* 57 FR 55620, 55622 (November 25, 1992) (stating that section 184(b)(2) "is specifically limited to VOC sources because section 182(f) does not refer to the section 184 definition in describing the major stationary source definitions applicable for NO_X purposes"); Region 1 EPA New England NO_X RACT Summary (stating that for "Marginal and Moderate nonattainment areas and attainment areas in the OTR, a major NO_X source is one with the potential to emit 100 tpy or more of NO_X"). *https://www3.epa.gov/region1/airquality/noxract.html.*

corresponding major source thresholds for those area classifications.

c. Comments and Responses.

Comment: Two commenters did not support the EPA's proposed revision of the NO_X reporting threshold for sources within an OTR from 100 tpy to 50 tpy. The commenters contended that any changes to reporting thresholds in AERR Table 1 must be consistent with major source definitions established in the CAA and regulation.

Response: We agree with the commenters and are not finalizing the proposed revision. As discussed previously, we have determined that CAA section 182(f) does not apply the major stationary source threshold for VOCs contained in 184(b)(2) to major stationary sources of NO_X in an OTR.

2. Emissions Statements

For nonattainment areas, air agencies must develop, and include in their SIPs, emission reporting programs for certain VOC and NO_X sources in accordance with CAA section 182(a)(3)(B).[56] The required state program defines how air agencies obtain emissions data directly from certain facilities, and these data, along with other information, are then reported to the EPA as part of SIP inventories required under CAA sections 182(a)(1) and 182(a)(3)(A). This state program is generally referred to as an emissions statement regulation, and it outlines how certain facilities must report emissions and facility activity data to an air agency, typically a state agency. Reports submitted to air agencies must be accompanied by "a certification that the information contained" in the report is "accurate to the best knowledge" of the facility.[57] To properly implement the emissions reporting requirements, emissions statement regulations should be coordinated carefully with the data elements that are required by the EPA (the existing requirements at 40 CFR 51.1115 and the requirements finalized in this rule at 40 CFR 51.1315). An air agency must submit the emissions statement regulation required by CAA section 182(a)(3)(B), or a written statement certifying a previously approved regulation, to the EPA as a SIP revision for approval (*see* Section III.A.2 of this preamble). CAA section 110, in conjunction with 40 CFR 51.102, 51.103 and Appendix V, establishes the procedure for submitting a SIP revision.

V. Additional Considerations

This section addresses several important SIP-related topics for which the EPA did not propose specific regulatory provisions due to lingering legal issues, scientific unknowns and uncertainties associated with developing and implementing new regulatory requirements and/or policies. The EPA is using this final rule notice, however, to articulate our existing requirements and policies pertaining to these topics and to inform possible future actions.

A. Managing Emissions From Wildfire and Wildland Prescribed Fire

a. Proposed Recommendation. The preamble to the proposal for this rule recognized both that prescribed fires are a source of emissions that can have a greater or lesser impact on ozone concentrations depending on how and when the prescribed fire is conducted, and that a prescribed fire program can be a way to reduce emissions from catastrophic wildfires which can impact ozone concentrations. In the preamble to the proposal, the EPA proposed to recommend, as guidance to air agencies, that in their attainment demonstrations they account for emissions from wildfire and wildland prescribed fire as described in the final $PM_{2.5}$ SIP Requirements Rule.

b. Final Recommendation. The EPA continues to recommend that air agencies use the approach described in the final $PM_{2.5}$ SIP Requirements Rule when accounting for emissions from wildfire and wildland prescribed fire. Before explaining this recommendation further, the EPA wishes to emphasize that this recommendation is focused on wildland fire management. There are other uses of prescribed fire and other types of burning that may occur in nonattainment areas, or that may affect downwind nonattainment areas, such as burning of land clearing debris, agricultural burning and burning of logging slash on land where the primary purpose of the logging is for commercial timber sale.[58] The challenges with applying the traditional nonattainment planning framework discussed here are particular to wildland fire and prescribed fire on wildlands. The EPA believes that addressing these other uses of prescribed fire does not present nearly the same level of challenge as does addressing wildland fire, and, thereby, can still be accommodated within the nonattainment planning framework. For example, where these other types of burning currently contribute to ozone levels in a nonattainment area, air agencies may, with an adequate technical demonstration, be able to take credit for reductions in ozone concentrations resulting from improvement in smoke management techniques for these types of prescribed fire where the improvement results in a demonstrated reduction in impacts in the nonattainment area.

The EPA also wants to clarify that we continue to encourage federal, state, local and tribal agencies and private land owners, to take situation-appropriate steps to minimize impacts from prescribed fire emissions on wildland. The EPA encourages all land owners and managers to apply appropriate basic smoke management practices (BSMP) to reduce emissions from prescribed fires, especially where an air agency has determined that prescribed fires are a significant source affecting air quality. The EPA understands that the federal land managers (FLMs) apply these measures routinely and will be available to consult with other agencies and private land owners interested in doing the same.

However, for several reasons, the EPA does not believe it would be effective policy or technically appropriate to recommend that control measures for wildland fire be adopted into SIPs as enforceable measures and credited for emissions reductions (of ozone and precursors) that would help the area attain the standard.[59] Instead, the EPA

[56] CAA section 182(a)(3)(B)(2) allows that air agencies may waive, with the EPA's approval, the requirement for emission statements for classes or categories of sources with less than 25 tpy of actual plant-wide NO_X or VOC emissions in nonattainment areas, provided the class or category is included in the base year and periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(a), respectively. Emissions in this case must be calculated using emission factors established by the EPA, or other methods acceptable to the EPA. We emphasize that the 25 tpy emissions threshold applies separately for purposes of emissions statement requirements, and does not relate to the major stationary source reporting thresholds for emissions inventories in AERR Table 1.

[57] Additional details on developing emissions statement regulations can be found in the guidance document titled "Guidance on the Implementation of an Emission Statement Program (DRAFT)," (July 1992) available at: *https://www.epa.gov/air-emissions-inventories/implementation-emission-statement-program.*

[58] The EPA notes that some wildland logging operations are conducted for the same purposes as prescribed fire (*e.g.*, reducing fuel load, ecosystem benefits). The fact that some of the removed trees may be sold as timber does not make commercial timber sale the primary purpose of such operations.

[59] These reasons include concerns raised by commenters on the $PM_{2.5}$ SIP Requirements Rule about the difficulties associated with requiring (or even encouraging) states to incorporate wildland fire emissions into existing nonattainment planning procedures and practices under the CAA; high year-to-year variability and unpredictability with emissions from wildland fires; uncertainty in the amount of credit to give for reduced wildfire within the planning period and in the amount of benefit that exists after accounting for increases in

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recommends that ozone nonattainment plans (and in particular the attainment demonstrations) not account for expected air quality changes over the planning period resulting from changes in the use of wildland prescribed fire or other wildland fire management practices to reduce future wildfires, or air quality changes over the planning period resulting from changes in wildland fire emissions due to a program of prescribed fire or due to any other cause, including climate change. In most cases, state attainment demonstration modeling should assume that wildland prescribed fire and wildfire emissions in the attainment year will be equal to, and have the same temporal and geographic pattern as, those assumed in the baseline inventory year.

The EPA acknowledges that some level and temporal and spatial patterns of fire emissions must still be assumed in the attainment demonstration in order to ensure that the required air quality modeling results in a realistic physical and chemical environment and a correspondingly realistic model response against which to analyze the changes from source categories where express accounting of emissions changes is being done. This final rule does not constrain the options for states regarding the appropriate assumptions to make for fire emissions. Rather, the guidance in this preamble simply recommends that once this base level is established, ozone plans should not attempt to project changes over the planning period in emissions from wildfires or prescribed fires on wildland within the nonattainment area, or in upwind areas included in the modeling domain, that are due to variability in wildfire occurrence or changes in the use of wildland prescribed fire or other wildland fire management practices. Moreover, the EPA anticipates that changes in spatial and temporal patterns of wildfire will likewise be too uncertain for them to be allowed to have the effect of reducing or increasing the control requirement on conventional anthropogenic sources. The EPA, therefore, recommends that wildland fire emissions generally should be held constant in the air quality modeling over the planning period, regardless of whether wildland fire management practices by land managers are expected, and possibly encouraged or required, to change.

Air agencies have flexibility in determining how best to represent wildland fire emissions. As noted earlier, base year emissions inventories for the nonattainment areas should represent the conditions leading to nonattainment and be consistent with inventories used for modeling. For fires, the EPA additionally encourages air agencies to use a representative mix of prescribed fire and wildfire in their inventories. Using ozone as an example, some plans under previous ozone NAAQS have estimated the actual fire emissions and temporal and spatial patterns from a given year and used this same estimate as part of the assumed future baseline inventory for planning, while others have used average emissions over multiple years. Other approaches may be appropriate as well. Moreover, regardless of the approach used, the EPA still encourages air agencies to submit actual wildfire and prescribed fire activity data that are critical to developing emissions estimates to the NEI, as suggested in the AERR.

A consequence of the recommendation of not expressly accounting for changes in wildland fires in attainment demonstrations is that measures to reduce emissions from wildland fires, such as prescribed fire to prevent catastrophic wildfires or smoke management programs and BSMP for prescribed fires in wildland, need not be included as RACM for the respective fire types. This is because the changes in emissions due to such measures would not be accounted for in determining what is necessary for attainment and/or what would advance the attainment date, which is how the EPA is recommending that RACM be determined. So, for example, in an area that can attain in 6 years with measures that do not address wildland fire, the EPA does not recommend that states attempt to quantify whether increased prescribed fire could advance the attainment date by 1 year, due to the aforementioned difficulties associated with such quantification.

To be clear, nothing about this recommendation regarding RACM is intended to suggest that prescribed fires should be ignited in wildland (or elsewhere) without regard to the air quality or public health consequences. As noted earlier, the EPA believes these consequences are important to address, and intends to engage in dialogue with the FLMs, air agencies, tribes, state and private land owners and other stakeholders at appropriate times, such as during the process for the development of land management plans, about how land managers determine when and where prescribed fire is appropriate for particular wildlands and how to identify and implement appropriate mitigation measures. The guidance in this preamble simply makes clear the EPA's view regarding our recommendation for RACM for wildland fires.

c. Comments and Responses

Comment: The EPA received comments expressing agreement with the EPA's recommended approach to managing emissions from wildfire and wildland prescribed fires. A few commenters took positions on specifically how to define RACM for wildfires, ranging from suggesting that the EPA require smoke management plans to simply stating that prescribed fires themselves are RACM with no further measures required. Some commenters disagreed with our position that states not take credit in the SIP for emission reductions attributable to a reduced incidence of wildfire if the state can demonstrate that the measures in the SIP can be expected to reduce emissions from wildfire events that would ordinarily not be excluded from the design value for the area. Other commenters disagreed with our recommendation that wildfire emissions be kept constant in projections for the attainment demonstration.

Response: In light of the fact that the EPA did not propose specific guidance on defining RACM for wildfires and typically does not define RACM for specific categories, and the fact that the EPA is not recommending that states include RACM for wildland fires, we are not providing further guidance in response to those comments. The basis for recommending that wildfire emissions be kept constant in baseline projections is explained earlier and is driven by the uncertainties (*e.g.*, patterns, timing and variability) in predicting fire emissions that affect ozone levels in in nonattainment areas. This recommendation is only guidance, and is not binding on the states or the EPA. In our actions on individual SIPs, the public will have the opportunity to make similar comments and we will consider those comments in the context of those actions.

B. Transportation Conformity and General Conformity

1. What is conformity?

Conformity is required under CAA section 176(c) to ensure that federal actions are consistent with ("conform to") the applicable state, tribal or federal implementation plan (collectively referred to as the SIP in the remainder

prescribed fires within the planning period; and the fact that air quality data actually influenced by fire events may ultimately be excluded for regulatory purposes under the provisions of the Exceptional Events Rule (40 CFR 50.14).

of this section). Conformity to the applicable implementation plan means that federal activities will not cause or contribute to new violations of the standards, worsen existing violations or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and nonattainment areas redesignated to attainment that are required to have a CAA section 175A maintenance plan after 1990 ("maintenance areas"). Because certain provisions of section 176(c) apply only to highway and mass transit funding and approval actions, the EPA published two sets of regulations to implement section 176(c).

The EPA's Transportation Conformity Rule (40 CFR 51.390 and part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. These activities include adopting, funding or approving transportation plans, transportation improvement programs and federally supported highway and transit projects. The EPA first promulgated the Transportation Conformity Rule on November 24, 1993 (58 FR 62188), and subsequently published several amendments. We subsequently restructured the Transportation Conformity Rule so that existing transportation conformity requirements apply for any new or revised NAAQS (77 FR 14979; March 14, 2012). The Transportation Conformity Rule, therefore, does not need to be updated to reflect the 2015 ozone NAAQS. The EPA in June 2018 issued an update to existing transportation conformity guidance related to the implementation of the revised ozone NAAQS. The guidance is available at: *https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation*. For further information on transportation conformity rulemakings, policy guidance and outreach materials, *see* the EPA's website at *https://www.epa.gov/state-and-local-transportation*.

The EPA's general conformity regulations (40 CFR part 51, subpart W and 40 CFR part 93, subpart B) establish the criteria and procedures for determining whether activities not addressed by the transportation conformity rule conform to the appropriate implementation plan. The EPA first promulgated general conformity regulations in November 1993 (58 FR 63214; November 30, 1993)). Subsequently, the EPA finalized revisions to the general conformity regulations on April 5, 2010 (75 FR 17254). The general conformity program ensures that federal actions not related to highway and transit funding and approval actions will not interfere with the appropriate implementation plan. General conformity also fosters communications between federal agencies and state and local air quality agencies, provides for public notification of and access to federal agency general conformity determinations and allows for air quality review of individual federal actions. More information on the general conformity program is available at *https://www.epa.gov/general-conformity*.

2. Why is the EPA discussing transportation and general conformity in this final rulemaking?

The EPA is discussing transportation and general conformity in this rulemaking in order to provide affected parties with information on when conformity must be implemented after areas are designated nonattainment for the 2015 ozone NAAQS. The information presented here is consistent with existing conformity regulations and statutory provisions that are not addressed by this ozone implementation rulemaking. Affected parties include state, local and tribal transportation and air quality agencies, metropolitan planning organizations and federal agencies including the U.S. Department of Transportation (DOT), the U.S. Department of Defense (DOD), the U.S. Department of Interior (DOI) and the U.S. Department of Agriculture (USDA).

3. When would transportation and general conformity apply to areas designated nonattainment for the 2015 ozone NAAQS?

Transportation and general conformity will apply 1 year after the effective date of nonattainment designations for the 2015 ozone NAAQS. CAA section 176(c)(6) provides a 1-year grace period from the effective date of initial designations for any new or revised NAAQS before transportation and general conformity apply in nonattainment areas. The grace period applies even if the area had been designated nonattainment for a prior ozone NAAQS. For additional information on transportation conformity requirements and the 1-year grace period please refer to the EPA's transportation conformity guidance for the 2015 ozone NAAQS available at: *https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation*.

As discussed in Section II of this preamble, the EPA proposed and sought comment on two alternative approaches for revoking the 2008 ozone NAAQS for all purposes and, where applicable, establishing anti-backsliding requirements. We are not taking any final action regarding an approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements: the EPA intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking. We note here that the CAA requires transportation and general conformity determinations in areas that are designated nonattainment or maintenance for a given pollutant and standard, which at this time includes the 2008 ozone NAAQS.

4. Are there any other impacts related to general conformity based on implementation of the 2015 ozone NAAQS?

As air agencies develop SIP revisions for the 2015 and future ozone NAAQS, the agency recommends that state and local air quality agencies work with federal agencies with large facilities (*e.g.*, commercial airports, ports and large military bases) that might take actions subject to the general conformity regulations to establish an emissions budget in the SIP for those facilities in order to facilitate future general conformity determinations. Such a budget could be used by federal agencies in determining conformity or identifying mitigation measures for particular projects at those facilities, but only if the budget level is included and identified in the SIP.

In a few cases, tracts of land under federal management may also be included in nonattainment and maintenance area boundaries. The role of prescribed fire in these areas should be assessed in concert with those federal land management agencies. In such areas the EPA encourages air agencies to consider including, in any baseline, modeling and SIP attainment inventory used and/or submitted, emissions expected from projects subject to general conformity, including emissions from wildland fire that may be reasonably expected in the area. Where appropriate, air agencies may consider developing plans for addressing wildland fires in collaboration with land managers and owners. Information is available from DOI and USDA Forest Service on the ecological role of fire and on smoke management programs and BSMP.[60]

[60] USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, available at:

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C. Requirements for Contingency Measures in the Event of Failure To Meet a Milestone or To Attain

1. Summary of Proposal

For purposes of the 2015 ozone NAAQS, the EPA proposed no changes to the requirements for contingency measures articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12285; March 6, 2015). As required by the CAA, states must include in their nonattainment area SIPs contingency measures that are consistent with CAA section 172(c)(9). For areas classified Serious or higher, states must also include contingency measures that are also consistent with CAA section 182(c)(9), with a limited exception for Extreme nonattainment areas relying on plan provisions approved under CAA section 182(e)(5).

2. Final Rule

The EPA is finalizing the proposed requirements. Contingency measures required under CAA sections 172(c)(9) and 182(c)(9) must be fully adopted rules or measures that can take effect without further action by the state or the EPA upon failure to meet milestones or attain by the attainment deadline. Per the EPA guidance,[61] these measures should provide 1 year's worth of emissions reductions, or approximately 3 percent of the baseline emissions inventory. Once triggered, if these adopted contingency measures are insufficient to attain the standard, an air agency must conduct additional control measure development and implementation for the area as necessary to correct the shortfall.

Regarding content of the 1 year's worth of reductions covered by the contingency measures, the EPA is continuing to allow contingency measure emissions reductions to be based entirely or in part on NO_X controls if the area has completed the initial 15 percent ROP VOC reduction required by CAA section 182(b)(1)(A)(i) and an air agency's analyses have demonstrated that NO_X substitution (entirely or in part) would be effective in bringing the area into attainment.

With respect to Extreme ozone nonattainment areas, CAA section 182(e)(5) allows the agency to exercise discretion in approving Extreme area attainment plans that rely, in part, on the future development of new control technologies or improvements of existing control technologies, where certain conditions are met. This discretion can be applied as long as an air agency has demonstrated that: All RACM, including RACT, have been included in the plan; the area's RFP demonstration during the first 10 years after designation does not rely on anticipated future technologies; and the air agency has submitted enforceable commitments to timely develop and adopt contingency measures to be implemented if the anticipated future technologies do not achieve planned reductions. The EPA is continuing to allow air agencies to submit, for Extreme nonattainment areas, enforceable commitments to develop and adopt contingency measures meeting the requirements of 182(e)(5) to satisfy the requirements for attainment contingency measures in CAA sections 172(c)(9) and 182(c)(9). These enforceable commitments must obligate the air agency to submit the required contingency measures to the EPA no later than 3 years before any applicable implementation date, in accordance with CAA section 182(e)(5).[62] We note that this does not, however, relieve air agencies from obligations to submit contingency measures as required by CAA sections 172(c)(9) and 182(c)(9) for periods in the first 10 years after designation.

As noted in the November 17, 2016, proposed rulemaking, the EPA acknowledges that the U.S. Court of Appeals for the Ninth Circuit issued an opinion in *Bahr* v. *EPA*, 836 F.3d 1218 (9th Cir. 2016), *cert. denied*, 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018), which rejected the EPA's longstanding interpretation of CAA section 172(c)(9) in the context of a SIP for particulate matter standards that allowed states to rely on control measures that are already in effect as a valid means to meet the contingency measure requirement. The EPA does not currently plan to alter the agency's longstanding interpretation outside of the Ninth Circuit, especially in light of a prior decision from the U.S. Court of Appeals for the Fifth Circuit upholding that interpretation. *See Louisiana Envt'l Action Network* v. *EPA*, 382 F.3d 575 (5th Cir. 2004) (*LEAN*); see also 40 CFR 56.5(b).

3. Comments and Responses

Comment: A commenter noted that the EPA acknowledges the *Bahr* v. *EPA* decision, but declines to abide by it. The commenter asserts that *Bahr* was properly decided, and the EPA must follow it with regards to contingency measures required under CAA sections 172(c)(9), 182(c)(9) and 182(e)(5).

Response: The appropriateness of relying on already-implemented reductions to meet the contingency measures requirement has been addressed in two federal circuit court decisions. *See LEAN*, 382 F.3d at 586; *Bahr*, 836 F.3d 1218. The EPA believes that the language of sections 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to make RFP or for attainment in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under the EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called "early triggered" contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* has created a split among the federal circuit courts, with the Fifth Circuit upholding the agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation.

States located in circuits other than the Ninth may elect to rely on the EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. The EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, the EPA will carefully review each such measure contained in an air agency's submission, and intends to consult with air agencies considering such measures early in the attainment plan development process.

http://www.nrcs.usda.gov/internet/FSE_DOCUMENTS/stelprdb1046311.pdf.

[61] "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Directors (August 23, 1993), available at: *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19930823_shapiro_15pct_rop_guidance.pdf.*

[62] For example, where a state intends to rely on CAA section 182(e)(5) commitments to satisfy the CAA section 182(c)(9) contingency measure requirement for an RFP milestone in year 2027, the commitments must obligate the state to submit adopted contingency measures to the EPA no later than 2024 (*i.e.*, 3 years before RFP contingency measures for 2027 would be implemented).

D. Background Ozone

With respect to the larger issue of background ozone (or U.S. background (USB)), the EPA has solicited input from air agencies, tribes and interested stakeholders on aspects of USB that are relevant to attaining the 2015 ozone NAAQS in a manner consistent with the provisions of the CAA.[63] To establish a common understanding and foundation for discussion, the EPA released a white paper titled, "Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone" in December 2015, and held a workshop in February 2016 to discuss information in the white paper.[64] Workshop attendees included representatives of state, local and tribal air agencies and other interested stakeholders. General concerns expressed by attendees that commented were that the EPA is underestimating the magnitude and effects of USB, that available policy solutions do not provide meaningful relief from nonattainment designations in affected areas, and that USB can make meeting nonattainment area requirements unreasonably difficult or costly.[65]

The EPA continues to engage with stakeholders and the academic community to refine and conduct national and global model simulations to better characterize USB, and is actively evaluating the need for further guidance and/or rules to address USB based on feedback received and new understandings that may emerge from ongoing research and analysis. In 2017 and 2018, the EPA activities include participation in the Background Ozone Science Assessment organized by the Western States Air Resources Council, the Western Regional Air Partnership and the American Petroleum Institute,[66] the United Nations' Hemispheric Transport of Air Pollutants task force[67] and the U.S. National Air and Space Administration's Health and Air Quality Applied Sciences Team.[68] Each of these efforts includes workshops for stakeholders and development of scientific products that inform the EPA's understanding of USB. However, the EPA is not adopting requirements regarding background ozone with this rulemaking.

The EPA also in 2016 recently finalized revisions to the Exceptional Events Rule to further facilitate review and approval of exceptional events that contribute to USB, such as stratospheric ozone intrusions and wildfires (81 FR 68216; October 3, 2016). Guidance is currently available for demonstrations of exceptional events for high wind dust, and the EPA finalized guidance for ozone associated with wildfire events in September 2016.[69] The EPA expects to make available similar guidance for stratospheric ozone intrusions by the end of 2018. However, the EPA is not revising the Exceptional Events Rule or guidance with this rulemaking.

E. Additional Policies and Programs for Achieving Emissions Reductions

1. Multi-Pollutant Planning

Increasingly, state air agencies are considering multi-pollutant emission reduction strategies. States have expressed interest in a number of those strategies, ranging from energy efficiency and renewable energy (EE/RE) programs to land use planning and travel efficiency programs. This section discusses EE/RE, and Sections E.2 and E.3 that follow discuss the latter programs.

In recent years, states have expressed increased interest in EE/RE programs when assessing compliance options for ozone RFP and attainment demonstration SIPs. Many states are already implementing cost-effective EE/RE requirements that reduce all types of power generation-related emissions (including NAAQS-related air pollutants such as NO_X, $PM_{2.5}$, and sulfur dioxide (SO_2) and other air pollutants, such as hazardous air pollutants). Effectively assessing these approaches will require strong working relationships between state energy and environmental officials. As state public utility commissions (PUCs) and state energy offices implement, increase the stringency of or adopt new EE/RE requirements, their expertise can assist air agencies to incorporate the NO_X emission impacts into ozone RFP and attainment demonstration SIPs.

States and other authorities have requested the EPA's assistance in accounting for the emissions reductions achieved through EE/RE programs in NAAQS SIPs and tribal implementation plans (TIPs), and the EPA has responded to those requests by developing several resources, including the "Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs" (released August 2012)[70] and the AVoided Emissions geneRation Tool (AVERT), a tool for quantifying NO_X, SO_2 and CO_2 avoided emissions (released February 2014).[71] The Roadmap describes four pathways (baseline emissions projection, control strategy, emerging/voluntary measures and weight of evidence determination) by which EE/RE policies and programs could be included in a SIP. Each pathway is appropriate in certain circumstances (existing vs. new EE/RE, control vs. voluntary measures etc.) and the Roadmap can help decision-makers consider their options as they decide which pathway(s) to pursue for incorporating EE/RE policies and programs into SIP/TIP demonstrations. The Roadmap's Appendix I also presents several methods available for quantifying the avoided NO_X emissions from fossil fuel generation as a result of electricity savings from EE/RE policy/program implementation.[72]

The EPA's tool, AVERT, can help planners in quantifying the emissions reductions that result from EE/RE policies and programs. AVERT outputs are readily available for Sparse Matrix Operator Kernel Emissions formatting to incorporate the emission impacts into air quality models.

The EPA recognizes that states may now have at their disposal other quantification tools. An update of the "Air Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations" (released July 2017) provides examples of tools that states can use to quantify the power sector emissions and EE/RE.[73] In this guidance, the EPA does not limit the types of tools states can use, so long as

[63] For purposes of NAAQS implementation, the EPA considers USB to be any ozone formed from sources or processes other than U.S. manmade emissions of NO_X, VOCs, methane and CO.

[64] The white paper and other workshop details are available at: *https://www.epa.gov/ozone-pollution/background-ozone-workshop-and-information.*

[65] A high-level summary of workshop feedback is available at: *https://www.epa.gov/sites/production/files/2016-03/documents/bgo3-high-level-summary.pdf.* Additional written comments from interested parties are located in a separate EPA docket available at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OAR–2016–0097).

[66] A summary of this Background Ozone Science Assessment workshop is available at: *https://www.wrapair2.org/pdf/BOSA_March_28-29_workshop_agenda.pdf.* A related journal article is currently undergoing peer review.

[67] A work plan and list of publications is available on the website: *www.htap.org.*

[68] Details about these Health and Air Quality Applied Sciences Team workshops and projects are available on the website: *https://haqast.org.*

[69] Guidance documents and more information about exceptional events can be found at: *https://www.epa.gov/air-quality-analysis/exceptional-events-rule-and-guidance.*

[70] Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs available at: *https://www.epa.gov/sites/production/files/2016-05/documents/eeremanual_0.pdf.*

[71] AVERT available at: *http://www3.epa.gov/avert/.*

[72] Available at *https://www.epa.gov/sites/production/files/2016-05/documents/appendixi_0.pdf.*

[73] Available at: *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate.*

states appropriately document their assumptions.

State PUCs, primarily through their utilities, have in recent years been rapidly increasing resources devoted to EE programs. In the 5 years spanning 2006 to 2011, budgets for EE programs more than tripled, from $1.6 billion to $5.9 billion. Additionally, EE spending is projected to continue to grow at a substantial rate.[74] As of March 2015, 23 states have mandatory energy efficiency requirements, two states have voluntary targets, and two states allow energy efficiency as a compliance option for their renewable portfolio standard (RPS).[75]

Also, state-level RE requirements have been implemented in 29 states plus Washington, DC, representing all regions of the country.[76] Between the years 2020 and 2030, many state-level RPS programs require electric utilities to serve from 15 to 40 percent of their retail sales with renewable power.[77]

To further help states assess the effects of these programs, the EPA developed a counterfactual EE/RE scenario for two areas that were nonattainment for the 2008 ozone NAAQS, including the New York-New Jersey-Connecticut area.[78] In these illustrative examples the EPA used AVERT to approximate the potential emissions that would have been emitted into the atmosphere without current state-level EE/RE requirements. For the New York-New Jersey-Connecticut area, the EPA estimated that the current state-level RE requirements[79] will avoid over 24 tons per summer day of NO_X in 2020, and the current state-level EE programs[80] will avoid nearly 17 tons per summer day of NO_X in 2020.[81]

2. Land Use Planning

Air agencies may also wish to consider strategies that foster more efficient urban and regional development patterns as a long-term air pollution control measure. Resources include the U.S. Department of Housing and Development–DOT–EPA Partnership for Sustainable Communities, as well as the policy and technical guidance documents on land use and related travel efficiency available on the EPA's Office of Transportation and Air Quality website.[82] These documents provide communities with the information they need to better understand the link between air quality, transportation and land use, and how certain land use policies have the potential to help local areas achieve and maintain healthy air quality. The documents also include methods to help communities account for the air quality benefits of their local land use in their air quality plans.

If wildfire impacts are significant in a particular area, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively with land managers and land owners to employ various mitigation measures including taking steps to minimize fuel loading in areas vulnerable to fire.

3. Travel Efficiency

Areas may also consider incorporating in their SIPs travel efficiency strategies, such as new or expanded mass transit options, commuter strategies, system operations (*e.g.*, ramp metering), pricing (*e.g.*, parking fees, congestion pricing, roadway tolls), real-time travel information and multimodal freight strategies. The EPA has released several documents that could be useful to air agencies that want to evaluate emissions reductions from travel efficiency strategies. These documents provide information on analysis methods and the potential effectiveness of different combinations of travel efficiency measures for reducing emissions. Additionally, the EPA has compiled a report about transportation control measures that have been implemented across the country for a variety of purposes, including reducing emissions related to criteria pollutants. All of these documents are available on the EPA's Office of Transportation and Air Quality website.[83]

F. Additional Requirements Related to Enforcement and Compliance

CAA section 172(c)(6) requires nonattainment SIPs to "include enforceable emission limitations, and such other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment . . ." The EPA's "Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans" (EPA–452/R–93–005, June 1993)[84] is still relevant to rules adopted for SIPs under the 2015 ozone NAAQS and should be consulted for purposes of developing appropriate enforceable nonattainment plan provisions under CAA section 172(c)(6). The EPA did not propose, and is not adopting, any additional specific regulatory provisions related to compliance and enforcement for implementing the 2015 ozone NAAQS, and received no adverse comments on the existing recommended approach and related guidance.

G. Applicability of Final Rule to Tribes

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction.[85] The Tribal Authority Rule (TAR) (40 CFR part 49.1–49.11), which implements CAA section 301(d), sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs (40 CFR 49.6, 49.7). As discussed in detail in the proposed 2008

[74] American Council for an Energy-Efficient Economy (ACEEE) 2013 State Energy Efficiency Scorecard (November 2013), available at: *http://www.aceee.org/state-policy/scorecard/*.

[75] U.S. EPA 2015. Energy and Environmental Guide to Action, Chapter 4 available at: *https://www.epa.gov/statelocalenergy/energy-and-environment-guide-action-chapter-4-energy-efficiency-policies*.

[76] RE requirements include Renewable Portfolio Standards or state-enacted RE requirements on a Mega-Watt (MW) basis. Database of State Incentives for Renewables and Efficiency, March 2013, available at: *http://www.dsireusa.org*.

[77] U.S. EPA. 2015 Energy and Environment Guide to Action, Chapter 5 available at: *https://www.epa.gov/statelocalenergy/energy-and-environment-guide-action-chapter-5-renewable-portfolio-standards*.

[78] This area encompasses eight counties in New York, 12 counties in New Jersey and three counties in Connecticut. The EPA's analysis is described in the Technical Support Document "Demonstrating NO_X Emission Reduction Benefits of State-Level Renewable Energy and Energy Efficiency Policies," available in the docket for this rulemaking.

[79] The 2020 RE requirements in each state are different and range from 20 percent to 30 percent.

[80] The EE programs used in each state are different. Connecticut's estimated annual efficiency savings is 2.8 percent, New York's target was 15 percent savings from baseline by 2015 and New Jersey incentivized efficiency improvements through a funding program of $265 million in FY2014.

[81] For context, the RFP plan for the New York-New Jersey-Connecticut 1997 ozone NAAQS nonattainment area included a 2008 NO_X emissions projection of 269 tons per summer day.

[82] *See http://www.epa.gov/otaq/stateresources/policy/pag_transp.htm*.

[83] *See https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation*.

[84] Available at: *http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=00002TCM.txt*.

[85] On January 17, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating the EPA's 2011 rule titled "Review of New Sources and Modifications in Indian Country" (76 FR 38748) with respect to non-reservation areas of Indian country (*See, Oklahoma Department of Environmental Quality* v. *EPA*, 740 F.3d 185 (D.C. Cir. 2014)). Under the court's reasoning, with respect to CAA SIPs, a state has primary regulatory jurisdiction in non-reservation areas of Indian country (*i.e.*, Indian allotments located outside of reservations and dependent Indian communities) within its geographic boundaries unless the EPA or a tribe has demonstrated that a tribe has jurisdiction over a particular area of non-reservation Indian country within the state.

Ozone NAAQS SIP Requirements Rule (78 FR 34209; June 6, 2013), tribes are not required to submit TIPs under the TAR. However, should a tribe choose to develop a TIP, this rule is intended to serve as a guide for addressing key implementation issues for areas of Indian country, particularly for any areas of Indian country that may be designated as nonattainment areas separate from surrounding state areas.

It is important for state and local air agencies and tribes to work together to coordinate planning efforts where nonattainment areas include both Indian country and state land. States need to incorporate Indian country emissions in their base emissions inventories if Indian country is part of an attainment or nonattainment area. Tribes and states should coordinate their planning activities as appropriate to ensure that neither is adversely affecting attainment of the NAAQS in the area as a whole. Coordinated planning in these areas will help ensure that the planning decisions made by the state and local air agencies and tribes complement each other and that the nonattainment area makes reasonable progress toward attainment and ultimately attains the 2015 ozone NAAQS. In reviewing and approving individual TIPs and SIPs, we will determine if together they are consistent with the overall air quality needs of an area.

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under CAA section 301(d) and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose (40 CFR 49.6–49.9). Affected states and tribes with approved TAS must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, we encourage states to extend the same notice to all affected tribes, regardless of their TAS status.

Executive Orders and the EPA's Indian policies generally call for the EPA to coordinate and consult with tribes on matters that affect tribes. Executive Order 13175, titled, "Consultation and Coordination with Indian Tribal Governments" requires the EPA to develop a process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications." In addition, the EPA's policies include the agency's 1984 Indian Policy relating to Indian tribes and implementation of federal environmental programs, the February 2014 "OAR Handbook for Interacting with Tribal Governments" and the "EPA Policy on Consultation and Coordination with Indian Tribes." [86] Consistent with these policies, the EPA intends to meet with tribes on activities potentially affecting the attainment and maintenance of the 2015 ozone NAAQS in Indian country, including our actions on SIPs. As such, it would be helpful for states to work with tribes whose land that is part of the same general air quality area during the SIP development process and to coordinate with tribes as they develop their SIPs, regardless of whether the tribe's area of Indian country is separately designated.

VI. Environmental Justice Considerations

The EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not negatively affect the level of protection provided to human health or the environment under the 2015 ozone NAAQS, which are set at levels to protect sensitive populations with an adequate margin of safety.[87] These regulations help clarify the SIP requirements and the NNSR permitting requirements to be met by air agencies in order to attain the 2015 ozone NAAQS as expeditiously as practicable. These requirements are designed to protect all segments of the general population and do not adversely affect the health or safety of minority, low-income or indigenous populations.

Comment: One commenter on the proposed rulemaking stated that the implementation rule must identify specific measures directed to minority, low-income and/or indigenous people. The commenter noted that the EPA identified such measures in the $PM_{2.5}$ SIP Requirement Rule. The commenter requests that the EPA require states to utilize specific measures when developing attainment plans, updating yearly monitoring plans and initiating the permitting process for overburdened communities.

Response: The EPA is not making any changes to its proposed approach in response to the commenter's request that the EPA require states to utilize specific measures directed to minority, low-income and indigenous people to help address ground-level ozone. In the CAA's framework of cooperative federalism, states are primarily responsible for developing plans for achieving NAAQS in areas within their jurisdiction, based on planning rules and guidance promulgated by the EPA. These planning requirements include (but are not limited to) provisions for implementing emissions controls, tracking progress toward attainment and monitoring and reporting air quality data, with the overarching goal of attaining and maintaining the NAAQS as expeditiously as practical, but no later than the CAA's maximum attainment date. In the $PM_{2.5}$ SIP Requirements Rule, the EPA encouraged states to consider various tools to help users identify areas with minority and/or low-income populations, potential environmental quality issues, a combination of environmental and demographic indicators that is greater than usual and other factors that may be of interest. The EPA included these tools in the $PM_{2.5}$ SIP Requirements Rule because areas designated nonattainment for the $PM_{2.5}$ standards can contain sources of directly emitted pollutants that can have adverse impacts on a local neighborhood scale. By contrast, elevated levels of ambient ozone are the result of secondary urban-scale atmospheric formation involving emissions from ubiquitous sources of ozone precursors (VOC and NO_X) including motor vehicles, large and small industrial processes and consumer products which result in more regional scale impacts further down wind. The EPA encourages states to work with communities to develop ozone-related control strategies that most effectively reduce emissions that contribute to elevated ozone levels.

VII. Statutory and Executive Order Reviews

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

[86] Tribal guidance documents are available at: *https://www.epa.gov/sites/production/files/2018-01/documents/oar_handbook_updated_1.24.18_.pdf* and *http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes.*

[87] The EPA conducted a regulatory impact analysis (RIA) of its final action establishing the 2015 ozone NAAQS. The demographic analysis conducted as part of the RIA found that in areas with poor air quality relative to the revised standards, the representation of minority populations was slightly greater than in the U.S. as a whole (*see* Chapter 9, section 9.10 and Appendix 9A of the RIA). Because the air quality in these areas does not currently meet the revised standards, populations in these areas would be expected to benefit from implementation of the strengthened standards. The RIA is available at *https://www3.epa.gov/ttn/ecas/docs/20151001ria.pdf* and in the RIA docket (EPA–HQ–OAR–2013–0169).

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

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

This action is not subject to Executive Order 13771 because this final rule is expected to result in no more than *de minimis* costs.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned the EPA ICR No. 2347.03 and OMB Reference No. 2060–0695. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is finalizing these implementing regulations for the 2015 ozone NAAQS so that air agencies will know what CAA requirements apply to their nonattainment areas when the air agencies develop their SIPs or SIP revisions for attaining and maintaining the NAAQS. The intended effect of these implementing regulations is to provide certainty to air agencies regarding their planning obligations. For purposes of analysis of the estimated paperwork burden,[88] the EPA assumed 57 nonattainment areas,[89] some of which must prepare an attainment demonstration as well as submit an RFP and RACT SIP. The attainment demonstration requirement appears in 40 CFR 51.1308, which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP SIP submission requirement appears in 40 CFR 51.1310, and the RACT SIP submission requirement appears in 40 CFR 51.1312, which implements CAA subsections 172(c)(1) and 182(b)(2), (c), (d), and (e).

Air agencies with areas that have been previously designated nonattainment should already have information from many emission sources, as facilities should have provided this information to meet 1-hour, 1997 and/or 2008 ozone NAAQS SIP requirements, operating permit program requirements and/or emissions reporting requirements.

The annual burden for information collection averaged over the first 3 years of the ICR is estimated to be a total of 41,800 labor hours per year at an annual labor cost of $2.5 million (present value) or approximately $107,000 per state for the estimated 23 state air agency respondents. The ICR Supporting Statement for the 2015 8-hour Ozone NAAQS Implementation Rule, EPA ICR No. 2347.03, provided in the docket, provides the details for the 23 state air agencies that would be required to provide the estimated 66 SIP revisions for the 57 hypothetical areas designated nonattainment for the 2015 ozone standard. The average annual reporting burden is 633 hours per response, with approximately 2.87 responses per state for 66 state responses from the state air agencies. There are no capital or operating and maintenance costs associated with the proposed rulemaking requirements.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this rule include state and local governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule because this action only addresses how a SIP will provide for adequate attainment and maintenance of the NAAQS and meet the obligations of the CAA. Although some states may ultimately decide to impose economic impacts on small entities, that is not required by this rule and would only occur at the discretion of the state.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 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. The CAA imposes the obligation for states to submit attainment plans to implement the ozone NAAQS. In this rule, the EPA is clarifying those requirements. Therefore, this action is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

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.

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 would not have a substantial direct effect on one or more Indian tribes, since no tribe is required to develop a TIP under these regulatory revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although there were no substantial direct impacts on tribes, consistent with the February 2014 "OAR Handbook for Interacting with Tribal Governments," and the "EPA Policy on Consultation and Coordination with Indian Tribes," the EPA briefed tribal officials during the development of this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that

[88] Burden is defined at 5 CFR 1320.3(b).

[89] The EPA developed a hypothetical list of nonattainment areas for estimating the burden for states to meet their 2015 ozone nonattainment area requirements. The hypothetical nonattainment areas were based on the preliminary 2013–2015 air quality data available. The hypothetical nonattainment areas include multiple counties for most areas based on the existing 2008 and 1997 8-hour ozone nonattainment areas, Combined Statistical Area, or Core Based Statistical Area boundary associated with a violating monitor. Note that these areas are used for analytical purposes only. Actual nonattainment areas and boundaries are determined through the designations process.

the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health or safety-based federal standard established pursuant to the CAA.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section VI of this preamble.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

M. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator" or (ii) when such action is locally or regionally applicable, if "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."

The EPA is determining that this rule for the 2015 ozone NAAQS SIP requirements is "nationally applicable" within the meaning of CAA section 307(b)(1). First, the rulemaking addresses implementation of the NAAQS that applies to all states and territories in the U.S. Second, the rulemaking addresses planning requirements for potential nonattainment areas in states across the U.S. that are located in various EPA regions and numerous federal circuits. Third, the rulemaking addresses a common core of knowledge and analysis involved in formulating the decisions and a common interpretation of the requirements of the CAA being applied to potential nonattainment areas in states across the country. Courts have found similar implementation rulemaking actions to be nationally applicable.[90]

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by February 4, 2019. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings to enforce these requirements.

VIII. Statutory Authority

The statutory authority for this action is provided by sections 109; 110; 172; 181 through 185B; 301(a)(1) and 501(2)(B) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7661(2)(B)).

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: November 7, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is 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.

■ 2. In Appendix A to subpart A of part 51; revise Table 1 to read as follows:

Appendix A to Subpart A of Part 51—Tables

TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS [1] BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30

Pollutant	Every-year	Triennial	
	Type A sources [2]	Type B sources	NAA sources [3]
(1) SO_2	≥2500	≥100	≥100.
			$PM_{2.5}$ (Serious) ≥70.
(2) VOC	≥250	≥100	≥100.
		within OTR [4] ≥50	within OTR ≥50.
			O_3 (Serious) ≥50.
			O_3 (Severe) ≥25.
			O_3 (Extreme) ≥10.
			$PM_{2.5}$ (Serious) ≥70.

[90] *See, e.g., Texas* v. *EPA*, 2011 U.S. App. LEXIS 5654 (5th Cir. 2011) (finding SIP call to 13 states to be nationally applicable and thus transferring the case to the U.S. Court of Appeals for the D.C. Circuit in accordance with CAA section 307(b)(1)).

TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS [1] BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30—Continued

Pollutant	Every-year	Triennial	
	Type A sources [2]	Type B sources	NAA sources [3]
(3) NO_X	≥2500	≥100	≥100.
			O_3 (Serious) ≥50.
			O_3 (Severe) ≥25.
			O_3 (Extreme) ≥10.
			$PM_{2.5}$ (Serious) ≥70.
(4) CO	≥2500	≥1000	≥1000.
			CO (all areas) ≥100.
(5) Lead		≥0.5 (actual)	≥0.5 (actual).
(6) Primary PM_{10}	≥250	≥100	≥100.
			PM_{10} (Serious) ≥70.
(7) Primary $PM_{2.5}$	≥250	≥100	≥100.
			$PM_{2.5}$ (Serious) ≥70.
(8) NH_3	≥250	≥100	≥100.
			$PM_{2.5}$ (Serious) ≥70.

[1] Thresholds for point source determination shown in tons per year of potential to emit as defined in 40 CFR part 70, with the exception of lead. Reported emissions should be in actual tons emitted for the required time period.
[2] Type A sources are a subset of the Type B sources and are the larger emitting sources by pollutant.
[3] NAA = Nonattainment Area. The point source reporting thresholds vary by attainment status for SO_2, VOC, NO_X, CO, PM_{10}, $PM_{2.5}$, and NH_3.
[4] OTR = Ozone Transport Region (see 40 CFR 51.1300(k)).

* * * * *

■ 3. In § 51.165, revise paragraph (a)(11) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(11) Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution—The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph.

(i) The plan may allow the offset requirement in paragraph (a)(3) of this section for emissions of the ozone precursors NO_X and VOC to be satisfied, where appropriate, by offsetting reductions of actual emissions of either of those precursors, if all other requirements contained in this section for such offsets are also satisfied.

(A) The plan shall indicate whether such precursor substitutions for ozone precursors are to be based on an area-specific default ratio (default ratio) for the applicable ozone nonattainment area, established in regulations as part of the approved plan, or default IPT ratios for an applicable ozone nonattainment area established in advance by an air agency that are presumed to be appropriate for each permit application in the area, absent contrary information in the record of an individual permit application, or case-specific ratios established for individual permits.

(B)(*1*) Where a state seeks to use a default IPT ratio that is not part of the approved plan, the plan shall include the following to authorize the development of a default ratio for a particular ozone nonattainment area, including a revised default ratio resulting from the periodic review required under paragraph (a)(11)(i)(B)(*2*) of this section:

(*i*) A description of the model(s) that will be used to develop any default ratio;

(*ii*) A description of the approach that will be used to analyze modeling data, ambient monitoring data, and emission inventory data to determine the sensitivity of an area to emissions of ozone precursors in the formation of ground-level ozone; and

(*iii*) A description of the modeling demonstration that will be used to show that the default ratio provides an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

(*2*) The plan shall require that for any default ratio for ozone, the reviewing authority shall evaluate that ratio at least every 5 years to determine whether current conditions support the continued use of such ratio.

(C) The plan shall require that, for any case-specific permit ratio for ozone proposed by a permit applicant to be used for a particular permit, the following information shall be submitted to the reviewing authority to support approval of the ratio:

(*1*) The description of the air quality model(s) used to propose a case-specific ratio; and

(*2*) the proposed ratio for the precursor substitution and accompanying calculations; and

(*3*) a modeling demonstration showing that such ratio(s) as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

(ii) The plan may allow the offset requirements in paragraph (a)(3) of this section for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under paragraph (a)(1)(xxxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

* * * * *

■ 4. In § 51.1300 add paragraphs (f) through (q) to read as follows:

§ 51.1300 Definitions.

* * * * *

(f) *2008 ozone NAAQS* means the 2008 8-hour primary and secondary ozone NAAQS codified at 40 CFR 50.15.

(g) *Attainment year ozone season* shall mean the ozone season

immediately preceding a nonattainment area's maximum attainment date.

(h) *Initially designated* means the first designation that becomes effective for an area for a specific NAAQS and does not include a redesignation to attainment or nonattainment for that specific NAAQS.

(i) *Nitrogen Oxides* (NO_X) means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(j) *Ozone season* means for each state (or portion of a state), the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1(i) for that state (or portion of a state).

(k) *Ozone transport region* (OTR) means the area established by CAA section 184(a) or any other area established by the Administrator pursuant to CAA section 176A for purposes of ozone.

(l) *Reasonable further progress* (RFP) means the emissions reductions required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and § 51.1310. The EPA interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or NO_X.

(m) *Rate-of-progress* (ROP) means the 15 percent progress reductions in VOC emissions over the first 6 years after the baseline year required under CAA section 182(b)(1).

(n) *I/M* refers to the inspection and maintenance programs for in-use vehicles required under the 1990 CAA Amendments and defined by subpart S of 40 CFR part 51.

(o) *Current ozone NAAQS* means the most recently promulgated ozone NAAQS at the time of application of any provision of this subpart.

(p) *Base year inventory* for the nonattainment area means a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1).

(q) *Ozone season day emissions* means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.

■ 5. Adding §§ 51.1304 through 51.1319 to subpart CC to read as follows:

Sec.

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

* * * * *

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

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§§ 51.1304–51.1305 [Reserved]

§ 51.1306 Redesignation to nonattainment following initial designations.

For any area that is initially designated attainment for the 2015 ozone NAAQS and that is subsequently redesignated to nonattainment for the 2015 ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part other than an attainment date is extended by a period of time equal to the length of time between the effective date of the initial designation for the 2015 ozone NAAQS and the effective date of the redesignation, except as otherwise provided in this subpart. The maximum attainment date for a redesignated area would be based on the area's classification, consistent with Table 1 in § 51.1303.

§ 51.1307 Determining eligibility for 1-year attainment date extensions for an 8-hour ozone NAAQS under CAA section 181(a)(5).

(a) A nonattainment area will meet the requirement of CAA section 181(a)(5)(B) pertaining to 1-year extensions of the attainment date if:

(1) For the first 1-year extension, the area's 4th highest daily maximum 8-hour average in the attainment year is no greater than the level of that NAAQS.

(2) For the second 1-year extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is no greater than the level of that NAAQS.

(b) For purposes of paragraph (a)(1) of this section, the area's 4th highest daily maximum 8-hour average for a year shall be from the monitor with the highest 4th highest daily maximum 8-hour average for that year of all the monitors that represent that area.

(c) For purposes of paragraph (a)(2) of this section, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, shall be from the monitor in each year with the highest 4th highest daily maximum 8-hour average of all monitors that represent that area.

§ 51.1308 Modeling and attainment demonstration requirements.

(a) An area classified Moderate under § 51.1303(a) shall submit an attainment demonstration that provides for such specific reductions in emissions of VOCs and NO_X as necessary to attain the primary NAAQS by the applicable attainment date, and such demonstration is due no later than 36 months after the effective date of the area's designation for the 2015 ozone NAAQS.

(b) An area classified Serious or higher under § 51.1303(a) shall be subject to the attainment demonstration requirement applicable for that classification under CAA section 182(c), and such demonstration is due no later than 48 months after the effective date of the area's designation for the 2015 ozone NAAQS.

(c) An attainment demonstration due pursuant to paragraph (a) or (b) of this section must meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date; the adequacy of an attainment demonstration shall be demonstrated by means of a photochemical grid model or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(d) *Implementation of control measures.* For each nonattainment area for which an attainment demonstration is required pursuant to paragraph (a) or (b) of this section, the state must provide for implementation of all

control measures needed for attainment as expeditiously as practicable. All control measures in the attainment plan and demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding any alternate RACT and/or RACM implementation deadline requirements in § 51.1312.

§ 51.1309 [Reserved]

§ 51.1310 Requirements for reasonable further progress (RFP).

(a) *RFP for nonattainment areas classified pursuant to § 51.1303.* The RFP requirements specified in CAA section 182 for that area's classification shall apply.

(1) *Submission deadline.* For each area classified Moderate or higher pursuant to § 51.1303, the state shall submit a SIP revision no later than 36 months after the effective date of designation as nonattainment for the 2015 ozone NAAQS that provides for RFP as described in paragraphs (a)(2) through (4) of this section.

(2) *RFP requirements for areas with an approved prior ozone NAAQS 15 percent VOC ROP plan.* An area classified Moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which the EPA fully approved a 15 percent plan for a prior ozone NAAQS is considered to have met the requirements of CAA section 182(b)(1) for the 2015 ozone NAAQS and instead:

(i) If classified Moderate, the area is subject to the RFP requirements under CAA section 172(c)(2) and shall submit a SIP revision that:

(A) Provides for a 15 percent emission reduction from the baseline year within 6 years after the baseline year; and

(B) Relies on either NO_X or VOC emissions reductions (or a combination) to meet the requirements of paragraph (a)(2)(i)(A) of this section. Use of NO_X emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(ii) If classified Serious or higher, the area is subject to RFP under CAA sections 172(c)(2) and 182(c)(2)(B), and shall submit a SIP revision no later than 48 months after the effective date of designation providing for an average emissions reduction of 3 percent per year:

(A) For the first 6-year period after the baseline year and all remaining 3-year periods until the year of the area's attainment date; and

(B) That relies on either NO_X or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(ii)(A). Use of NO_X emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(3) *RFP requirements for areas for which an approved 15 percent VOC ROP plan for a prior ozone NAAQS exists for only a portion of the area.* An area that contains one or more portions for which the EPA fully approved a 15 percent VOC ROP plan for a prior ozone NAAQS (as well as portions for which the EPA has not fully approved a 15 percent plan for a prior ozone NAAQS) shall meet the requirements of either paragraph (a)(3)(i) or (ii) of this section.

(i) The state shall not distinguish between the portion of the area with a previously approved 15 percent ROP plan and the portion of the area without such a plan, and shall meet the requirements of paragraph (a)(4) of this section for the entire nonattainment area.

(ii) The state shall treat the area as two parts, each with a separate RFP target as follows:

(A) For the portion of the area without an approved 15 percent VOC ROP plan for a prior ozone NAAQS, the state shall submit a SIP revision as required under paragraph (a)(4) of this section.

(B) For the portion of the area with an approved 15 percent VOC ROP plan for a prior ozone NAAQS, the state shall submit a SIP as required under paragraph (a)(2) of this section.

(4) *ROP Requirements for areas without an approved prior ozone NAAQS 15 percent VOC ROP plan.* (i) For each area, the state shall submit a SIP revision consistent with CAA section 182(b)(1). The 6-year period referenced in CAA section 182(b)(1) shall begin January 1 of the year following the year used for the baseline emissions inventory.

(ii) For each area classified Serious or higher, the state shall submit a SIP revision consistent with CAA section 182(c)(2)(B). The final increment of progress must be achieved no later than the attainment date for the area.

(5) *Creditability of emission control measures for RFP plans.* Except as specifically provided in CAA section 182(b)(1)(C) and (D), CAA section 182(c)(2)(B), and 40 CFR 51.1310(a)(6), all emission reductions from SIP-approved or federally promulgated measures that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements in this section, provided the reductions meet the requirements for creditability, including the need to be enforceable, permanent, quantifiable, and surplus.

(6) *Creditability of out-of-area emissions reductions.* For purposes of meeting the RFP requirements in § 51.1310, in addition to the restrictions on the creditability of emission control measures listed in § 51.1310(a)(5), creditable emission reductions for fixed percentage reduction RFP must be obtained from emissions sources located within the nonattainment area.

(7) *Calculation of non-creditable emissions reductions.* The following four categories of control measures listed in CAA section 182(b)(1)(D) are no longer required to be calculated for exclusion in RFP analyses because the Administrator has determined that due to the passage of time the effect of these exclusions would be *de minimis:*

(i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990;

(ii) Regulations concerning Reid vapor pressure promulgated by November 15, 1990;

(iii) Measures to correct previous RACT requirements; and

(iv) Measures required to correct previous I/M programs.

(b) *Baseline emissions inventory for RFP plans.* For the RFP plans required under this section, at the time of designation as nonattainment for an ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided that the year selected corresponds with the year of the effective date of designation as nonattainment for that NAAQS. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year. The emissions values included in the inventory required by this section shall be actual ozone season day emissions as defined by § 51.1300(q).

(c) *Milestones*—(1) *Applicable milestones.* Consistent with CAA section 182(g)(1) for each area classified Serious or higher, the state shall determine at specified intervals whether each area has achieved the reduction in emissions required under paragraphs (a)(2) through (4) of this section. The initial determination shall occur 6 years after the baseline year, and at intervals of every 3 years thereafter. The reduction in emissions required by the end of each interval shall be the applicable milestone.

(2) *Milestone compliance demonstrations.* For each area subject to the milestone requirements under paragraph (c)(1) of this section, not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which

a milestone occurs in cases where the ozone standards have been attained), each state in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. The demonstration under this paragraph must provide for objective evaluation of RFP toward timely attainment of the ozone NAAQS in the area, and may take the form of:

(i) Such information and analysis as needed to quantify the actual reduction in emissions achieved in the time interval preceding the applicable milestone; or

(ii) Such information and analysis as needed to demonstrate progress achieved in implementing the approved SIP control measures, including RACM and RACT, corresponding with the reduction in emissions achieved in the time interval preceding the applicable milestone.

§ 51.1311 [Reserved]

§ 51.1312 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).

(a) *RACT requirement for areas classified pursuant to § 51.1303.* (1) For each nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the VOC and NO_X RACT requirements in CAA sections 182(b)(2) and 182(f).

(2) *SIP submission deadline.* (i) For a RACT SIP required pursuant to initial nonattainment area designations, the state shall submit the RACT SIP for each area no later than 24 months after the effective date of designation for a specific ozone NAAQS.

(ii) For a RACT SIP required pursuant to reclassification, the SIP revision deadline is either 24 months from the effective date of reclassification, or the deadline established by the Administrator in the reclassification action.

(iii) For a RACT SIP required pursuant to the issuance of a new Control Techniques Guideline (CTG) under CAA section 183, the SIP revision deadline is either 24 months from the date of CTG issuance, or the deadline established by the Administrator in the action issuing the CTG.

(3) *RACT implementation deadline.* (i) For RACT required pursuant to initial nonattainment area designations, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designation.

(ii) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification.

(iii) For RACT required pursuant to issuance of a new CTG under CAA section 183, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the third year after the associated SIP submission deadline or the deadline established by the Administrator in the final action issuing the CTG.

(b) *Determination of major stationary sources for applicability of RACT provisions.* The amount of VOC and NO_X emissions are to be considered separately for purposes of determining whether a source is a major stationary source as defined in CAA section 302.

(c) *RACM requirements.* For each nonattainment area required to submit an attainment demonstration under § 51.1308(a) and (b), the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The SIP revision shall include, as applicable, other control measures on sources of emissions of ozone precursors located outside the nonattainment area, or portion thereof, located within the state if doing so is necessary or appropriate to provide for attainment of the applicable ozone NAAQS in such area by the applicable attainment date.

§ 51.1313 Section 182(f) NO_X exemption provisions.

(a) A person or a state may petition the Administrator for an exemption from NO_X obligations under CAA section 182(f) for any area designated nonattainment for a specific ozone NAAQS and for any area in a CAA section 184 ozone transport region.

(b) The petition must contain adequate documentation that the criteria in CAA section 182(f) are met.

(c) A CAA section 182(f) NO_X exemption granted for a prior ozone NAAQS does not relieve the area from any NO_X obligations under CAA section 182(f) for a current ozone NAAQS.

§ 51.1314 New source review requirements.

The requirements for nonattainment NSR for the ozone NAAQS are located in § 51.165. For each nonattainment area, the state shall submit a nonattainment NSR plan or plan revision for a specific ozone NAAQS no later than 36 months after the effective date of the area's designation of nonattainment or redesignation to nonattainment for that ozone NAAQS.

§ 51.1315 Emissions inventory requirements.

(a) For each nonattainment area, the state shall submit a base year inventory as defined by § 51.1300(p) to meet the emissions inventory requirement of CAA section 182(a)(1). This inventory shall be submitted no later than 24 months after the effective date of designation. The inventory year shall be selected consistent with the baseline year for the RFP plan as required by § 51.1310(b).

(b) For each nonattainment area, the state shall submit a periodic emissions inventory of emissions sources in the area to meet the requirement in CAA section 182(a)(3)(A). With the exception of the inventory year and timing of submittal, this inventory shall be consistent with the requirements of paragraph (a) of this section. Each periodic inventory shall be submitted no later than the end of each 3-year period after the required submission of the base year inventory for the nonattainment area. This requirement shall apply until the area is redesignated to attainment.

(c) The emissions values included in the inventories required by paragraphs (a) and (b) of this section shall be actual ozone season day emissions as defined by § 51.1300(q).

(d) In the inventories required by paragraphs (a) and (b) of this section, the state shall report emissions from point sources according to the point source emissions thresholds of the Air Emissions Reporting Requirements, 40 CFR part 51, subpart A.

(e) The data elements in the emissions inventories required by paragraphs (a) and (b) of this section shall be consistent with the detail required by 40 CFR part 51, subpart A. Since only emissions within the boundaries of the nonattainment area shall be included as defined by § 51.1300(q), this requirement shall apply to the emissions inventories required in this section instead of any total county requirements contained in 40 CFR part 51, subpart A.

§ 51.1316 Requirements for an Ozone Transport Region.

(a) *In general.* CAA sections 176A and 184 apply for purposes of the 2015 ozone NAAQS.

(b) *RACT requirements for certain portions of an ozone transport region.* (1) The state shall submit a SIP revision that meets the RACT requirements of CAA section 184(b) for all portions of the state located in an ozone transport region.

(2) *SIP submission deadline.* (i) For a RACT SIP required pursuant to initial nonattainment area designations, the state shall submit the RACT SIP revision no later than 24 months after the effective date of designation for a specific ozone NAAQS.

(ii) For a RACT SIP required pursuant to reclassification, the SIP revision deadline is either 24 months from the effective date of reclassification, or the deadline established by the Administrator in the reclassification action.

(iii) For a RACT SIP required pursuant to the issuance of a new CTG under CAA section 183, the SIP revision deadline is either 24 months from the date of CTG issuance, or the deadline established by the Administrator in the action issuing the CTG.

(3) *RACT implementation deadline.* (i) For RACT required pursuant to initial nonattainment area designations, the state shall provide for implementation of RACT as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designation.

(ii) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification.

(iii) For RACT required pursuant to issuance of a new CTG under CAA section 183, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the third year after the associated SIP submission deadline or the deadline established by the Administrator in the final action issuing the CTG.

§ 51.1317 Fee programs for Severe and Extreme nonattainment areas that fail to attain.

For each area classified Severe or Extreme for a specific ozone NAAQS, the state shall submit a SIP revision within 10 years of the effective date of designation for that ozone NAAQS that meets the requirements of CAA section 185.

§ 51.1318 Suspension of SIP planning requirements in nonattainment areas that have air quality data that meet an ozone NAAQS.

Upon a determination by the EPA that an area designated nonattainment for a specific ozone NAAQS has attained that NAAQS, the requirements for such area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the ozone NAAQS for which the determination has been made, shall be suspended until such time as: The area is redesignated to attainment for that NAAQS, at which time the requirements no longer apply; or the EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans.

§ 51.1319 [Reserved]

■ 6. In appendix S to part 51, revise paragraphs IV.G.5. introductory, and IV.G.5(i) and remove and reserve section VII.

The revisions read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

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IV. * * *

G. * * *

5. *Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution.* In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the emissions offsets obtained shall be for the same regulated nonattainment NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph IV.G.5 and the reviewing authority chooses to review such trading on a case by case basis as described in this section.

(i) A reviewing authority may choose to satisfy the offset requirements of paragraph IV.A, Condition 3 of this Ruling for emissions of the ozone precursors NO_X and VOC by offsetting reductions of emissions of either precursor, if all other requirements contained in this Ruling for such offsets are also satisfied. For a specific permit application, if the implementation of IPT is acceptable by the reviewing authority, the permit applicant shall submit to the reviewing authority for approval a case-specific permit IPT ratio for determining the required amount of emissions reductions to offset the proposed emissions increase when considered along with the applicable offset ratio as specified in paragraphs IV.G.2 through 4 of this Ruling. As part of the ratio submittal, the applicant shall submit the proposed permit-specific ozone IPT ratio to the reviewing authority, accompanied by the following information:

(a) A description of the air quality model(s) that were used to propose a case-specific ratio; and

(b) The proposed ratio for the precursor substitution and accompanying calculations; and

(c) A modeling demonstration showing that such ratio(s) as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

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