

PAL pollutant emissions is a violation of the PAL.

(ix) *Re-validation*. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Administrator. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) *Recordkeeping requirements*. (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(a) A copy of the PAL permit application and any applications for revisions to the PAL; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) *Reporting and notification requirements*. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Administrator in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii) of this section.

(i) *Semi-annual report*. The semi-annual report shall be submitted to the Administrator within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(a) through (g) of this section.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO<sub>2</sub>e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calcu-

lating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) *Deviation report*. The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The PAL requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and

completeness of the information provided in the report.

(iii) *Re-validation results.* The owner or operator shall submit to the Administrator the results of any re-validation test or method within 3 months after completion of such test or method.

(15) *Transition requirements.* (i) The Administrator may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after March 3, 2003.

(ii) The Administrator may supersede any PAL that was established prior to March 3, 2003 with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

(bb) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(cc) Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (cc)(1) through (3) of this section are met.

(1) *Capital cost threshold for equipment replacement.* (i) For an *electric utility steam generating unit*, as defined in § 52.21(b)(31), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.

(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph

(cc)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.

(iii) As an alternative to paragraph (cc)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (cc)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (cc)(1)(ii) of this section at the beginning of such fiscal year.

(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

(i) Except as provided in paragraph (cc)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow

rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(ii) Except as provided in paragraph (cc)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (cc)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (cc)(2)(i) and (ii) of this section.

(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(vi) Efficiency of a process unit is not a basic design parameter.

(3) The replacement activity shall not cause the process unit to exceed

any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

NOTE TO PARAGRAPH (cc): By a court order on December 24, 2003, this paragraph (cc) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

[43 FR 26403, June 19, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 52.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

EFFECTIVE DATE NOTE: At 76 FR 17556, Mar. 30, 2011, § 52.21(b)(2)(v) and (b)(3)(iii)(c) were stayed indefinitely.

#### § 52.23 Violation and enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule.

[39 FR 33512, Sept. 18, 1974, as amended at 54 FR 27285, June 28, 1989]

**§ 52.24 Statutory restriction on new sources.**

(a) Any area designated nonattainment pursuant to section 107(d) of the Act to which, immediately prior to the enactment of the Amendments to the Act of 1990 (November 15, 1990), a prohibition of construction or modification of major stationary sources was applied, shall retain that prohibition if such prohibition was applied by virtue of a finding of the Administrator that the State containing such an area:

(1) Failed to submit an implementation plan meeting the requirements of an approvable new source review permitting program; or

(2) Failed to submit an implementation plan that provided for timely attainment of the national ambient air quality standard for sulfur dioxide by December 31, 1982. This prohibition shall apply until the Administrator approves a plan for such area as meeting the applicable requirements of part D of title I of the Act as amended (NSR permitting requirements) or subpart 5 of part D of title I of the Act as amended (relating to attainment of the national ambient air quality standards for sulfur dioxide), as applicable.

(b) Permits to construct and operate as required by permit programs under section 172(c)(5) of the Act may not be issued for new or modified major stationary sources proposing to locate in nonattainment areas or areas in a transport region where the Administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area or transport region in which the proposed source is to be constructed or modified in accordance with the requirements of part D of title I of the Act.

(c) Whenever, on the basis of any information, the Administrator finds that a State is not in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may issue an order under section 113(a)(5) of the Act prohibiting the construction or modification of any major stationary source in any area to which such requirement applies.

(d) The restrictions in paragraphs (a) and (b) of this section apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant (or precursors, as applicable) for which the transport region or nonattainment area was designated such, and for which the applicable implementation plan is not being carried out in accordance with, or does not meet, the requirements of part D of title I of the Act.

(e) For any transport region or any area designated as nonattainment for any national ambient air quality standard, the restrictions in paragraphs (a) and (b) of this section shall apply to any major stationary source or major modification that would be major for the pollutant (or precursors, where applicable) for which the area is designated nonattainment or a transport region, if the stationary source or major modification would be constructed anywhere in the designated nonattainment area or transport region.

(f) The provisions in § 51.165 of this chapter shall apply in interpreting the terms under this section.

(g) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then:

(1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area or transport region in which the source or modification is located, then the permit may not be so revised; or

(2) If the construction moratorium is no longer in effect in that area, then the requirements of § 51.165 of this chapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(h) This section does not apply to major stationary sources or major modifications locating in a clearly defined part of a nonattainment area or transport region (such as a political subdivision of a State), where EPA

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finds that a plan which meets the requirements of part D of title I of the Act is in effect and is being implemented in that part.

(i)-(j) [Reserved]

(k) For an area designated as nonattainment after July 1, 1979, the Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S shall govern permits to construct and operate applied for during the period between the date of designation as nonattainment and the date the NSR permit program meeting the requirements of part D is approved. The Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S, shall also govern permits to construct and operate applied for in any area designated under section 107(d) of the CAA as attainment or unclassifiable for ozone that is located in an ozone transport region prior to the date the NSR permitting program meeting the requirements of part D is approved.

[70 FR 71704, Nov. 29, 2005]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 52.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

**§ 52.26 [Reserved]**

**§ 52.27 Protection of visibility from sources in attainment areas.**

(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas, from sources emitting pollutants in any portion of any State where the existing air quality is better than the national ambient air quality standards for such pollutants, and where a State PSD program has been approved as part of the applicable SIP pursuant to 40 CFR 51.24. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For purposes of this section, all terms shall have the meaning ascribed to them in the Clean Air

Act, in the prevention of significant deterioration (PSD) program approved as part of the applicable SIP pursuant to 40 CFR 51.24 for the State, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) *Federal visibility analysis.* Any person shall have the right, in connection with any application for a permit to construct a major stationary source or major modification, to request that the administrator take responsibility from the State for conducting the required review of a proposed source's impact on visibility in any Federal Class I area. If requested, the Administrator shall take such responsibility and conduct such review pursuant to paragraphs (e), (f) and (g) of this section in any case where the State fails to provide all of the procedural steps listed in paragraph (d) of this section. A request pursuant to this paragraph must be made within 60 days of the notice soliciting public comment on a permit, unless such notice is not properly given. The Administrator will not entertain requests challenging the substance of any State action concerning visibility where the State has provided all of the procedural steps listed in paragraph (d) of this section.

(d) *Procedural steps in visibility review.*

(1) The reviewing authority must provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include the proposed source's anticipated impacts on visibility in any Federal Class I area as provided by the applicant. Notification must also be given to all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) The reviewing authority must consider any analysis performed by the Federal land managers, provided within 30 days of the notification required

by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have:

(i) An adverse impact on visibility in any Federal Class I area, or

(ii) An adverse impact on visibility in an integral vista codified in part 81 of this title.

(3) Where the reviewing authority finds that such an analysis does not demonstrate that the effect in paragraphs (d)(2) (i) or (ii) of this section will occur, either an explanation of its decision or notification as to where the explanation can be obtained must be included in the notice of public hearing.

(4) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(i) of this section will occur, the permit shall not be issued.

(5) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(ii) of this section will occur, the reviewing authority may issue a permit if the emissions from the source or modification will be consistent with reasonable progress toward the national goal. In making this decision, the reviewing authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(e) *Federal land manager notification.* The Administrator shall provide all of the procedural steps listed in paragraph (d) of this section in conducting reviews pursuant to this section.

(f) *Monitoring.* The Administrator may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(g) *Public participation.* The Administrator shall follow the applicable procedures at 40 CFR part 124 in conducting reviews under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR part 124 do not apply.

(h) *Federal permit.* In any case where the Administrator has made a finding that a State consistently fails or is unable to provide the procedural steps listed in paragraph (d) of this section, the Administrator shall require all prospective permit applicants in such State to apply directly to the Administrator, and the Administrator shall conduct a visibility review pursuant to this section for all permit applications.

[50 FR 28551, July 12, 1985, as amended at 52 FR 45137, Nov. 24, 1987]

#### § 52.28 Protection of visibility from sources in nonattainment areas.

(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas where visibility is considered an important value, from sources emitting pollutants in any portion of any State where the existing air quality is not in compliance with the national ambient air quality standards for such pollutants. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section:

(1) *Visibility protection area* means any area listed in 40 CFR 81.401-81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the protection of visibility program (40 CFR 51.301) or the prevention of significant deterioration (PSD) program either approved as part of the applicable SIP pursuant to 40 CFR 51.24 or in effect for the applicable SIP pursuant to 40 CFR 52.21, all as in effect on July 12, 1985.

(c) *Review of major stationary sources and major modifications—source applicability and exemptions.* (1) No stationary source or modification to which the requirements of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Administrator has sole authority to issue any such permit unless the authority has

been delegated pursuant to paragraph (i) of this section.

(2) The requirements of this section shall apply to construction of any new major stationary source or major modification that would both be constructed in an area classified as non-attainment under section 107(d)(1)(A), (B) or (C) of the Clean Air Act and potentially have an impact on visibility in any visibility protection area.

(3) The requirements of this section shall apply to any such major stationary source and any such major modification with respect to each pollutant subject to regulation under the Clean Air Act that it would emit, except as this section otherwise provides.

(4) The requirements of this section shall not apply to a particular major stationary source or major modification, if:

(i) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the State in which the source or modification would be located requests that it be exempt from those requirements; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (A) Coal cleaning plants (with thermal dryers);
- (B) Kraft pulp mills;
- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);

- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants;
- (U) Fossil-fuel boiler (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(iii) The source is a portable stationary source which has previously received a permit under this section, and

(A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(B) The emissions from the source would not exceed its allowable emissions; and

(C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(D) Reasonable notice is given to the Administrator, prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation, unless a different time duration is previously approved by the Administrator.

(5) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as attainment under section 107 of the Clean Air Act.

(6) The requirements of this section shall not apply to a major stationary

source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(d) *Visibility Impact Analyses.* The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(e) *Federal land manager notification.*

(1) The Federal land manager and the Federal official charged with direct responsibility for management of Federal Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(2) The Administrator shall provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any visibility protection area. The Administrator shall also provide for such notification to the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any visibility protection area. The Administrator shall also notify all affected FLM's within 30 days of receipt of any advance notification of any such permit application.

(3) The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (e)(2) of this section, that such

proposed new major stationary source or major modification may have an adverse impact on visibility in any visibility protection area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the visibility protection area, the Administrator must, in the notice of public hearing, either explain his decision or give notice as to where the explanation can be obtained.

(f) *Public participation.* The Administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR part 124 do not apply.

(g) *National visibility goal.* The Administrator shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in visibility protection areas which impairment results from man-made air pollution. In making the decision to issue a permit, the Administrator may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(h) *Monitoring.* The Administrator may require monitoring of visibility in any visibility protection area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(i) *Delegation of authority.* (1) The Administrator shall have the authority to delegate the responsibility for conducting source review pursuant to this section to any agency in accordance with paragraphs (i)(2) and (3) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:



(i) Where the delegate agency is not an air pollution control agency it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall submit a copy of any public comment notice required under paragraph (f) of this section to the Administrator through the appropriate Regional Office.

(3) The Administrator's authority for reviewing a source or modification located on an Indian Reservation shall not be redelegated other than to a Regional Office of the Environmental Protection Agency, except where the State has assumed jurisdiction over such land under other laws. Where the State has assumed such jurisdiction, the Administrator may delegate his authority to the States in accordance with paragraph (i)(2) of this section.

[50 FR 28551, July 12, 1985]

§ 52.29 [Reserved]

**§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.**

(a) *Definitions.* For the purpose of this section:

(1) The term "political subdivision" refers to the representative body that is responsible for adopting and/or implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term "required activity" means the submission of a plan or plan item, or the implementation of a plan or plan item.

(3) The term "deficiency" means the failure to perform a required activity

as defined in paragraph (a)(2) of this section.

(4) For purposes of § 52.30, the terms "plan" or "plan item" mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Clean Air Act, as amended in 1990, or in response to a SIP call issued pursuant to section 110(k)(5) of the Act.

(b) *Sanctions.* During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination as provided under section 179(a)(1) through (4) is based.

(c) *Criteria.* For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out the required activity) to the political subdivision to perform the required activity.

(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) *Imposition of sanctions.* (1) If all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met

through the action or inaction of one political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[59 FR 1484, Jan. 11, 1994]

**§ 52.31 Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.**

(a) *Purpose.* The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the sequence in which sanctions will automatically apply under 42 U.S.C. 7509(b), following a finding made by the Administrator pursuant to 42 U.S.C. 7509(a).

(b) *Definitions.* All terms used in this section, but not specifically defined herein, shall have the meaning given them in § 52.01.

(1) *1990 Amendments* means the 1990 Amendments to the Clean Air Act (Pub. L. No. 101-549, 104 Stat. 2399).

(2) *Act* means Clean Air Act, as amended in 1990 (42 U.S.C. 7401 *et seq.* (1991)).

(3) *Affected area* means the geographic area subject to or covered by the Act requirement that is the subject of the finding and either, for purposes of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section, is or is within an area designated nonattainment under 42 U.S.C. 7407(d) or, for purposes of the offset sanction under paragraph (e)(1) of this section, is or is within an area otherwise subject to the emission offset requirements of 42 U.S.C. 7503.

(4) *Criteria pollutant* means a pollutant for which the Administrator has promulgated a national ambient air quality standard pursuant to 42 U.S.C. 7409 (i.e., ozone, lead, sulfur dioxide, particulate matter, carbon monoxide, nitrogen dioxide).

(5) *Findings* or *Finding* refer(s) to one or more of the findings, disapprovals, and determinations described in subsection 52.31 (c).

(6) *NAAQS* means national ambient air quality standard the Administrator has promulgated pursuant to 42 U.S.C. 7409.

(7) *Ozone precursors* mean nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).

(8) *Part D* means part D of title I of the Act.

(9) *Part D SIP or SIP revision or plan* means a State implementation plan or plan revision that States are required to submit or revise pursuant to part D.

(10) *Precursor* means pollutant which is transformed in the atmosphere (later in time and space from point of emission) to form (or contribute to the formation of) a criteria pollutant.

(c) *Applicability.* This section shall apply to any State in which an affected area is located and for which the Administrator has made one of the following findings, with respect to any part D SIP or SIP revision required under the Act:

(1) A finding that a State has failed, for an area designated nonattainment under 42 U.S.C. 7407(d), to submit a plan, or to submit one or more of the elements (as determined by the Administrator) required by the provisions of the Act applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under 42 U.S.C. 7410(k);

(2) A disapproval of a submission under 42 U.S.C. 7410(k), for an area designated nonattainment under 42 U.S.C. 7407(d), based on the submission's failure to meet one or more of the elements required by the provisions of the Act applicable to such an area;

(3)(i) A determination that a State has failed to make any submission required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, including an adequate maintenance plan, or has failed to make any submission, required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, that satisfies the minimum criteria established in relation to such submission under 42 U.S.C. 7410(k)(1)(A); or

(ii) A disapproval in whole or in part of a submission described under paragraph (c)(3)(i) of this section; or

(4) A finding that any requirement of an approved plan (or approved part of a plan) is not being implemented.

(d) *Sanction application sequencing.* (1) To implement 42 U.S.C. 7509(a), the offset sanction under paragraph (e)(1) of this section shall apply in an affected area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. To further implement 42 U.S.C. 7509(a), the highway sanction under paragraph (e)(2) of this section shall apply in an affected area 6 months from the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. For the findings under paragraphs (c)(2), (c)(3)(ii), and (c)(4) of this section, the date of the finding shall be the effective date as defined in the final action triggering the sanctions clock.

(2)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator issues such a proposed or final disapproval, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines

that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator issues such a proposed or final disapproval. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the proposed or final disapproval occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and more than 24 months after the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section

shall be stayed unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator issues such proposed or final disapproval.

(3)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has conditionally-approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency

prompting the finding and after 18 but before 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this

section shall be stayed unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill its commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable.

(4)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if the Administrator, prior to 18 months from the finding, has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section first applies, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 18 months but before 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected, or immediately if EPA's proposed or final action finding the deficiency has not been corrected occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section and the highway sanction under

paragraph (e)(2) of this section shall be stayed unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan, and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (c)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected.

(5) Any sanction clock started by a finding under paragraph (c) of this section will be permanently stopped and sanctions applied, stayed or deferred will be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected. For a sanctions clock and applied sanctions based on a finding under paragraphs (c)(1) and (c)(3)(i) of this section, a finding that the deficiency has been corrected will occur by letter from the Administrator to the State governor. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraphs (c)(2) and (c)(3)(ii) of this section, a finding that the deficiency has been corrected will occur through a final notice in the FEDERAL REGISTER fully approving the revised SIP. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraph (c)(4) of this section, a finding that the deficiency has been corrected will occur through a final notice in the FEDERAL REGISTER finding that the State is implementing the approved SIP.

(6) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the Administrator from determining through notice-and-comment rulemaking that in specific circumstances the highway sanction, rather than the offset sanction, shall apply 18 months after the Administrator makes one of the findings under paragraph (c) of this section, and that the offset sanction, rather than the

highway sanction, shall apply 6 months from the date the highway sanction applies.

(e) *Available sanctions and method for implementation*—(1) *Offset sanction.* (i) As further set forth in paragraphs (e)(1)(ii)–(e)(1)(vi) of this section, the State shall apply the emissions offset requirement in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the offset sanction. The State shall apply the emission offset requirements in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least two units of emission reductions for each unit of increased emissions of the pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made. If the deficiency prompting the finding under paragraph (c) of this section is not specific to one or more particular pollutants and their precursors, the 2-to-1 ratio shall apply to all pollutants (and their precursors) for which an affected area within the State listed in paragraph (e)(1)(i) of this section is required to meet the offset requirements of 42 U.S.C. 7503.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding is made with respect to a requirement for the criteria pollutant ozone or when the finding is not pollutant-specific, the State shall not apply the emissions offset requirements at a ratio of at least 2-to-1 for emission reductions to increased emissions for nitrogen oxides where, under 42 U.S.C. 7511a(f), the Administrator has approved an NO<sub>x</sub> exemption for the affected area from the Act's new source review requirements under 42 U.S.C. 7501–7515 for NO<sub>x</sub> or where the affected area is not otherwise subject to the Act's new source review requirements for emission offsets under 42 U.S.C. 7501–7515 for NO<sub>x</sub>.

(iii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding under paragraph (c) of this section is made with respect to PM-10, or the finding is not pollutant-specific, the State shall not apply the emissions offset requirements, at a ratio of at least 2-to-1 for emission reductions to increased emissions to PM-10 precursors

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if the Administrator has determined under 42 U.S.C. 7513a(e) that major stationary sources of PM-10 precursors do not contribute significantly to PM-10 levels which exceed the NAAQS in the affected area.

(iv) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, at the 2-to-1 ratio required under this section, the State shall comply with the provisions of a State-adopted new source review (NSR) program that EPA has approved under 42 U.S.C. 7410(k)(3) as meeting the nonattainment area NSR requirements of 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or, if no plan has been so approved, the State shall comply directly with the nonattainment area NSR requirements specified in 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or cease issuing permits to construct and operate major new or modified sources as defined in those requirements. For purposes of applying the offset requirement under 42 U.S.C. 7503 where EPA has not fully approved a State's NSR program as meeting the requirements of part D, the specifications of those provisions shall supersede any State requirement that is less stringent or inconsistent.

(v) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, any permit required pursuant to 42 U.S.C. 7503 and issued on or after the date the offset sanction applies under paragraph (d) of this section shall be subject to the enhanced 2-to-1 ratio under paragraph (e)(1)(i) of this section.

(2) *Highway funding sanction.* The highway sanction shall apply, as provided in 42 U.S.C. 7509(b)(1), in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the highway sanction, but shall apply only to those portions of affected areas that are designated nonattainment under 40 CFR part 81.

[59 FR 39859, Aug. 4, 1994]

**§ 52.32 Sanctions following findings of SIP inadequacy.**

For purposes of the SIP revisions required by § 51.120, EPA may make a finding under section 179(a) (1)-(4) of the Clean Air Act, 42 U.S.C. 7509(a) (1)-

(4), starting the sanctions process set forth in section 179(a) of the Clean Air Act. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

[60 FR 4737, Jan. 24, 1995]

**§ 52.33 Compliance certifications.**

(a) For the purpose of submitting compliance certifications, nothing in this part or in a plan promulgated by the Administrator shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(b) For all federal implementation plans, paragraph (a) of this section is incorporated into the plan.

[62 FR 8328, Feb. 24, 1997]

**§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.**

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(2) *Large Electric Generating Units (large EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving at any time during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than

25 MWe and produces electricity for sale.

(3) *Large Non-Electric Generating Units (large non-EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve at any time during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(A) At no time serves a generator producing electricity for sale; or

(B) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use 50 percent or less of the potential electrical output capacity of the unit.

(4) *New sources* means new and modified sources.

(5) *NO<sub>x</sub>* means oxides of nitrogen.

(6) *OTAG* means the Ozone Transport Assessment Group (active 1995–1997), a national work group that addressed the problem of ground-level ozone and the long-range transport of air pollution across the Eastern United States. The OTAG was a partnership between EPA, the Environmental Council of the States, and various industry and environmental groups.

(7) *Ozone season* means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(8) *Potential electrical output capacity* means, with regard to a unit, 33 percent of the maximum design heat input of the unit.

(9) *Unit* means a fossil-fuel fired stationary boiler, combustion turbine, or combined cycle system.

(b) *Purpose and applicability.* Paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section set forth the Administrator's findings with respect to the 1-hour national ambient air quality standard (NAAQS) for ozone that certain new and existing sources of emissions of nitrogen oxides ("NO<sub>x</sub>") in certain States emit or would emit NO<sub>x</sub> in violation of the prohibition in section 110(a)(2)(D)(i) of the Clean Air Act (CAA) on emissions in amounts that contribute significantly to nonattainment in certain States that submitted petitions in 1997–1998 addressing such NO<sub>x</sub> emissions under section 126 of the CAA. Paragraphs (d), (e)(3) and (e)(4), (f), and (h)(3) and (h)(4) of this section set forth the Administrator's affirmative technical determinations with respect to the 8-hour NAAQS for ozone that certain new and existing sources of emissions of NO<sub>x</sub> in certain States emit or would emit NO<sub>x</sub> in violation of the prohibition in section 110(a)(2)(D)(i) of the CAA on emissions in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, certain States that submitted petitions in 1997–1998 addressing such NO<sub>x</sub> emissions under section 126 of the CAA. (As used in this section, the term new source includes modified sources, as well.) Paragraph (i) of this section explains the circumstances under which the findings for sources in a specific State would be withdrawn. Paragraph (j) of this section sets forth the control requirements that apply to the sources of NO<sub>x</sub> emissions affected by the findings. Paragraph (k) of this section indefinitely stays the effectiveness of the affirmative technical determinations with respect to the 8-hour ozone standard.

(1) The States that submitted such petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (each of which, hereinafter in this section, may be referred to also as a "petitioning State").

(2) The new and existing sources of NO<sub>x</sub> emissions covered by the petitions that emit or would emit NO<sub>x</sub> emissions in amounts that make such significant



contributions are large electric generating units (EGUs) and large non-EGUs.

(c) *Section 126(b) findings relating to impacts on ozone levels in Connecticut—(1) Section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Connecticut if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (c)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Connecticut.

(2) *States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.* The States, or portions of States, that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (c)(1) of this section are:

(i) Delaware.

(ii) District of Columbia.

(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-2, of this part.

(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-2, of this part.

(v) Maryland.

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-2, of this part.

(vii) Portion of North Carolina located in OTAG Subregion 7, as shown in appendix F, Figure F-2, of this part.

(viii) New Jersey.

(ix) Portion of New York extending west and south of Connecticut, as shown in appendix F, Figure F-2, of this part.

(x) Ohio.

(xi) Pennsylvania.

(xii) Virginia.

(xiii) West Virginia.

(d) *Affirmative technical determinations relating to impacts on ozone levels in Maine—(1) Affirmative technical determinations with respect to the 8-hour ozone standard in Maine.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in the State of Maine, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (d)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 of appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Maine.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Maine.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.

(ii) Delaware.

(iii) District of Columbia.

(iv) Maryland.

(v) Massachusetts.

(vi) New Jersey.

(vii) New York.

(viii) Pennsylvania.

(ix) Rhode Island.

(x) Virginia.

(e) *Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in Massachusetts—(1) Section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.* The Administrator finds that any existing major source or group of stationary sources emits NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Massachusetts if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Massachusetts.

(2) *States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.* The portions of States that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (e)(1) of this section are:

(i) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) [Reserved]

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Massachusetts.* The Administrator of EPA finds that any existing major source or group of stationary sources emits NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Massachusetts, with respect to the 8-hour NAAQS for ozone if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(4) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Massachusetts.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Massachusetts.* The portions of States that contain sources for which EPA is making an affirmative technical determination are:

(i) All counties in Ohio located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(f) *Affirmative technical determinations relating to impacts on ozone levels in New*

*Hampshire—(1) Affirmative technical determinations with respect to the 8-hour ozone standard in New Hampshire.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of New Hampshire, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (f)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 of appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of New Hampshire.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in New Hampshire.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.

(ii) Delaware.

(iii) District of Columbia.

(iv) Maryland.

(v) Massachusetts.

(vi) New Jersey.

(vii) New York.

(viii) Pennsylvania.

(ix) Rhode Island.

(g) *Section 126(b) findings relating to impacts on ozone levels in the State of New York—(1) Section 126(b) findings with respect to the 1-hour ozone standard in the State of New York.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of New York if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (g)(2) of this section; and

(iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of New York.

(2) *States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in New York.* The States, or portions of States, that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (g)(1) of this section are:

- (i) Delaware.
- (ii) District of Columbia.
- (iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-6, of this part.
- (iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-6, of this part.
- (v) Maryland.
- (vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-6, of this part.
- (vii) Portion of North Carolina located in OTAG Subregions 6 and 7, as shown in appendix F, Figure F-6, of this part.
- (viii) New Jersey.
- (ix) Ohio.
- (x) Pennsylvania.
- (xi) Virginia.
- (xii) West Virginia.

(h) *Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in the State of Pennsylvania—(1) Section 126(b) findings with respect to the 1-hour ozone standard in the State of Pennsylvania.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Pennsylvania if it is or will be:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (h)(2) of this section; and (iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the

sources of NO<sub>x</sub> emissions covered by the petition of the State of Pennsylvania.

(2) *States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Pennsylvania.* The States that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (h)(1) of this section are:

- (i) North Carolina.
  - (ii) Ohio.
  - (iii) Virginia.
  - (iv) West Virginia.
- (3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Pennsylvania.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Pennsylvania, with respect to the 8-hour NAAQS for ozone:
- (i) In a category of large EGUs or large non-EGUs;
  - (ii) Located in one of the States (or portions thereof) listed in paragraph (h)(4) of this section; and
  - (iii) Within one of the "Named Source Categories" listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Pennsylvania.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Pennsylvania.* The States that contain sources for which EPA is making an affirmative technical determination are:

- (i) Alabama.
- (ii) Illinois.
- (iii) Indiana.
- (iv) Kentucky.
- (v) Michigan.
- (vi) Missouri.
- (vii) North Carolina.
- (viii) Ohio.
- (ix) Tennessee.
- (x) Virginia.
- (xi) West Virginia.

(i) *Withdrawal of section 126 findings.* Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and

(h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of §§ 51.121 and 51.122 of this chapter for such State.

(j) *Section 126 control remedy.* The Federal NO<sub>x</sub> Budget Trading Program in part 97 of this chapter applies to the owner or operator of any new or existing large EGU or large non-EGU as to which the Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section.

(k) *Stay of findings with respect to the 8-hour ozone standard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) of this section is stayed.

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until February 17, 2000.

[64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65 FR 2726, Jan. 18, 2000; 69 FR 31505, June 3, 2004]

**§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?**

(a)(1) The Federal CAIR NO<sub>x</sub> Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO<sub>x</sub>). Each State that is described in § 51.123(c)(1) and (2) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the PM<sub>2.5</sub> NAAQS. The provisions of subparts AA through II of part 97 of this chapter, regarding the CAIR NO<sub>x</sub> Annual Trading Program, apply to the

sources in each of these States that has not promulgated a SIP approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to NO<sub>x</sub> under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to the sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO<sub>x</sub> allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO<sub>x</sub> allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO<sub>x</sub> allowances for those years.

(b)(1) The Federal CAIR NO<sub>x</sub> Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to emissions of nitrogen oxides (NO<sub>x</sub>) during the ozone season, as defined in § 97.302 of this chapter. Each State that is described in § 51.123(c)(1) and (3) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 8-hour ozone NAAQS. The provisions of subparts AAAA through IIII of part 97 of this chapter, regarding the CAIR NO<sub>x</sub> Ozone Season Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for ozone relating to NO<sub>x</sub> under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to

sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO<sub>x</sub> Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO<sub>x</sub> Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO<sub>x</sub> Ozone Season allowances for those years.

(c) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§ 51.123 and 51.125 of this chapter.

(d)(1) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to NO<sub>x</sub> under § 51.123(o) of this chapter are: Indiana, and Ohio.

(2) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for ozone relating to NO<sub>x</sub> under § 51.123(aa) of this chapter, are: Indiana, and Ohio.

(e) Notwithstanding paragraphs (a) and (b) of this section, such paragraphs are not applicable as they relate to sources in the State of Minnesota as of December 3, 2009, except as provided in § 52.1240(b).

(f) Notwithstanding any provisions of paragraphs (a) through (d) of this section, subparts AA through II and AAAA through IIII of part 97 of this chapter, and any State's SIP to the contrary:

(1) With regard to any control period that begins after December 31, 2014,

(i) The provisions in paragraphs (a) through (d) of this section relating to NO<sub>x</sub> annual or ozone season emissions shall not be applicable; and

(ii) The Administrator will not carry out any of the functions set forth for

the Administrator in subparts AA through II and AAAA through IIII of part 97 of this chapter;

(2) The Administrator will not deduct for excess emissions any CAIR NO<sub>x</sub> allowances or CAIR NO<sub>x</sub> Ozone Season allowances allocated for 2015 or any year thereafter;

(3) By March 3, 2015, the Administrator will remove from the CAIR NO<sub>x</sub> Allowance Tracking System accounts all CAIR NO<sub>x</sub> allowances allocated for a control period in 2015 and any subsequent year, and, thereafter, no holding or surrender of CAIR NO<sub>x</sub> allowances will be required with regard to emissions or excess emissions for such control periods; and

(4) By March 3, 2015, the Administrator will remove from the CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System accounts all CAIR NO<sub>x</sub> Ozone Season allowances allocated for a control period in 2015 and any subsequent year, and, thereafter, no holding or surrender of CAIR NO<sub>x</sub> allowances will be required with regard to emissions or excess emissions for such control periods.

[72 FR 62343, Nov. 2, 2007, as amended at 74 FR 48862, Sept. 25, 2009; 74 FR 56726, Nov. 3, 2009; 75 FR 72962, Nov. 29, 2010; 76 FR 48353, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014]

**§ 52.36 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of sulfur dioxide?**

(a) The Federal CAIR SO<sub>2</sub> Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of sulfur dioxide (SO<sub>2</sub>). Each State that is described in § 51.124(c) of this chapter is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the PM<sub>2.5</sub> NAAQS. The provisions of subparts AAA through IIII of part 97 of this chapter, regarding the CAIR SO<sub>2</sub> Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of

an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to SO<sub>2</sub> under § 51.124 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

(b) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§ 51.124 and 51.125 of this chapter.

(c) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to SO<sub>2</sub> under § 51.124(o) of this chapter are: Indiana, and Ohio

(d) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

(e) Notwithstanding any provisions of paragraphs (a) through (c) of this section, subparts AAA through III of part 97 of this chapter and any State's SIP to the contrary:

(1) With regard to any control period that begins after December 31, 2014,

(i) The provisions of paragraphs (a) through (c) of this section relating to SO<sub>2</sub> emissions shall not be applicable; and

(ii) The Administrator will not carry out any of the functions set forth for the Administrator in subparts AAA through III of part 97 of this chapter; and

(2) The Administrator will not deduct for excess emissions any CAIR SO<sub>2</sub> allowances allocated for 2015 or any year thereafter.

[72 FR 62343, Nov. 2, 2007, as amended at 74 FR 48863, Sept. 25, 2009; 74 FR 56726, Nov. 3, 2009; 75 FR 72962, Nov. 29, 2010; 76 FR 48354, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014; 81 FR 74586, Oct. 26, 2016]

**§ 52.37 What are the requirements of the Federal Implementation Plans (FIPs) to issue permits under the Prevention of Significant Deterioration requirements to sources that emit greenhouse gases?**

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met to the extent the plan, as approved, of the states listed in paragraph (b) of this section does not apply with respect to emissions of the pollutant GHGs from certain stationary sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby made a part of the plan for each state listed in paragraph (b) of this section for:

(1) Beginning January 2, 2011, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(iv), and

(2) beginning July 1, 2011, in addition to the pollutant GHGs from sources described under paragraph (a)(1) of this section, stationary sources described in § 52.21(b)(49)(v).

(b) Paragraph (a) of this section applies to:

(1) Arizona, Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country);

(2)-(7) [Reserved]

(c) For purposes of this section, the "pollutant GHGs" refers to the pollutant GHGs, as described in § 52.21(b)(49)(i).

[75 FR 82254, Dec. 30, 2010, as amended at 76 FR 2589, Jan. 14, 2011; 76 FR 9664, Feb. 22, 2011; 77 FR 41918, July 17, 2012; 77 FR 62154, Oct. 12, 2012; 78 FR 19598, Apr. 2, 2013; 78 FR 70000, Nov. 22, 2013; 79 FR 28612, May 19, 2014]

**§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?**

(a)(1) The CSAPR NO<sub>x</sub> Annual Trading Program provisions set forth in subpart AAAAA of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO<sub>x</sub>).

(2) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas,

Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(3) Notwithstanding the provisions of paragraph (a)(1) of this section, a State listed in paragraph (a)(2) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO<sub>x</sub> Annual allowance allocation provisions replacing the provisions in §97.411(a) of this chapter with regard to the State and the control period in 2016, a list of CSAPR NO<sub>x</sub> Annual units and the amount of CSAPR NO<sub>x</sub> Annual allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2010;

(ii) The total amount of CSAPR NO<sub>x</sub> Annual allowance allocations on the list must not exceed the amount, under §97.410(a) of this chapter for the State and the control period in 2016, of the CSAPR NO<sub>x</sub> Annual trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart AAAAA of part 97 of this chapter;

(v) Provided that:

(A) By October 17, 2011, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (a)(3)(i) through (iv) of this section by April 1, 2015; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (a)(3)(v)(A) of this section by April 1, 2015.

(4) Notwithstanding the provisions of paragraph (a)(1) of this section, a State listed in paragraph (a)(2) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations revising subpart AAAAA of part 97 of this chapter as follows and not making any other substantive revisions of that subpart:

(i) The State may adopt, as CSAPR NO<sub>x</sub> Annual allowance allocation or auction provisions replacing the provisions in §§97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO<sub>x</sub> Annual allowances, and may adopt, in addition to the definitions in §97.402 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO<sub>x</sub> Annual allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO<sub>x</sub> Annual allowances for any such control period not exceeding the amount, under §§97.410(a) and 97.421 of this chapter for the State and such control period, of the CSAPR NO<sub>x</sub> Annual trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO<sub>x</sub> Annual allowances already allocated and recorded by the Administrator.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Annual allowances for any such control period to any CSAPR NO<sub>x</sub> Annual units covered by §97.411(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO <sub>x</sub> Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Annual allowances for any such control period to any CSAPR NO<sub>x</sub> Annual units covered by §§97.411(b)(1) and 97.412(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (a)(4)(i)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart AAAAA of part 97 of this chapter;

(ii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (a)(4)(i) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (a)(4)(i)(B) and (C) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (a)(4)(i) of this section.

(5) Notwithstanding the provisions of paragraph (a)(1) of this section, a State listed in paragraph (a)(2) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1) through (4) of this section with regard to sources in the State (but not sources in any Indian

country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO<sub>x</sub> Annual Trading Program set forth in §§97.402 through 97.435 of this chapter, except that the SIP revision:

(i) May adopt, as CSAPR NO<sub>x</sub> Annual allowance allocation or auction provisions replacing the provisions in §§97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO<sub>x</sub> Annual allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO<sub>x</sub> Annual allowances for any such control period not exceeding the amount, under §§97.410(a) and 97.421 of this chapter for the State and such control period, of the CSAPR NO<sub>x</sub> Annual trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO<sub>x</sub> Annual allowances already allocated and recorded by the Administrator.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Annual allowances for any such control period to any CSAPR NO<sub>x</sub> Annual units covered by §97.411(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO <sub>x</sub> Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.



Year of the control period for which CSAPR NO <sub>x</sub> Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Annual allowances for any such control period to any CSAPR NO<sub>x</sub> Annual units covered by §§97.411(b)(1) and 97.412(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Annual allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (a)(5)(i)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart AAAAA of part 97 of this chapter;

(ii) May adopt, in addition to the definitions in §97.402 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO<sub>x</sub> Annual allowance allocation or auction provisions adopted under paragraph (a)(5)(i) of this section;

(iii) May substitute the name of the State for the term "State" as used in subpart AAAAA of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§97.402 through 97.435 of this chapter; and

(iv) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§97.402 through 97.435 of this chapter and must not include the provisions in §§97.411(b)(2) and (c)(5)(iii), 97.412(b), and 97.421(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR

Federal Implementation Plan that is not replaced by the SIP revision;

(v) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§97.402 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.406(c)(2), and 97.425 of this chapter and the portions of other provisions of subpart AAAAA of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(vi) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (a)(5)(i) through (iv) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (a)(5)(i)(B) and (C) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (a)(5)(i) of this section.

(6) Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1) through (4) of this section for sources in the State, the provisions of paragraph (a)(2) of this section will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(7) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at

the time of such approval of the State's SIP revision, the Administrator has already started recording any allocations of CSAPR NO<sub>x</sub> Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart AAAAA of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO<sub>x</sub> Annual allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(8) The following States have SIP revisions approved by the Administrator under paragraph (a)(3), (4), or (5) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(3) of this section as replacing the CSAPR NO<sub>x</sub> Annual allowance allocation provisions in § 97.411(a) of this chapter with regard to the State and the control period in 2016: Alabama, Kansas, Missouri, and Nebraska.

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(4) of this section as replacing the CSAPR NO<sub>x</sub> Annual allowance allocation provisions in §§ 97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: Kansas and Missouri.

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1) through (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Alabama.

(b)(1) The CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program provisions and the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program provisions set forth respectively in subparts BBBB and EEEEE of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of NO<sub>x</sub> during the ozone season, defined as May 1 through September 30 of a calendar year.

(2)(i) The provisions of subpart BBBB of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions in 2015 and each subsequent year: Georgia.

(ii) The provisions of subpart BBBB of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(iii) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 and each subsequent year: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(3) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(i) or (ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation provisions replacing the provisions in § 97.511(a) of this chapter with regard to the State and the control period in 2016, a list of CSAPR NO<sub>x</sub> Ozone Season Group 1 units and the amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2010;

(ii) The total amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocations on the list must not exceed the

amount, under §97.510(a) of this chapter for the State and the control period in 2016, of the CSAPR NO<sub>x</sub> Ozone Season Group 1 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart BBBB of part 97 of this chapter;

(v) Provided that:

(A) By October 17, 2011 or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 6, 2015, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(3)(i) through (iv) of this section by April 1, 2015 or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(3)(v)(A) of this section by April 1, 2015 or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations revising subpart BBBB of part 97 of this chapter as follows and not making any other substantive revisions of that subpart:

(i) The State may adopt, as applicability provisions replacing the provisions in §97.504(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words "more than 25 MWe" are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words "more than 25 MWe" and is not

less than the amount specified by the words "15 MWe or more"; and

(ii) The State may adopt, as CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation or auction provisions replacing the provisions in §§97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, and may adopt, in addition to the definitions in §97.502 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for any such control period not exceeding the amount, under §§97.510(a) and 97.521 of this chapter for the State and such control period, of the CSAPR NO<sub>x</sub> Ozone Season Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances already allocated and recorded by the Administrator.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 1 units covered by §97.511(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.

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Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program set forth in §§ 97.502 through 97.535 of this chapter, except that the SIP revision:

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 1 units covered by §§ 97.511(b)(1) and 97.512(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(i) May adopt, as applicability provisions replacing the provisions in § 97.504(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words “more than 25 MWe” are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words “more than 25 MWe” and is not less than the amount specified by the words “15 MWe or more”; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(4)(ii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart BBBB of part 97 of this chapter:

(ii) May adopt, as CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation provisions replacing the provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances and that—

(iii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(4)(i) or (ii) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(4)(ii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(4)(i) or (ii) of this section.

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for any such control period not exceeding the amount, under §§ 97.510(a) and 97.521 of this chapter for the State and such control period, of the CSAPR NO<sub>x</sub> Ozone Season Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances already allocated and recorded by the Administrator.

(5) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 1 units covered by § 97.511(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period

(except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 1 units covered by §§97.511(b)(1) and 97.512(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(5)(ii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart BBBBB of part 97 of this chapter;

(iii) May adopt, in addition to the definitions in §97.502 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation or auction provisions adopted under paragraph (b)(5)(ii) of this section;

(iv) May substitute the name of the State for the term "State" as used in subpart BBBBB of part 97 of this chapter, to the extent the Administrator

determines that such substitutions do not make substantive changes in the provisions in §§97.502 through 97.535 of this chapter; and

(v) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§97.502 through 97.535 of this chapter and must not include the provisions in §§97.511(b)(2) and (c)(5)(iii), 97.512(b), and 97.521(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vi) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§97.502 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.506(c)(2), and 97.525 of this chapter and the portions of other provisions of subpart BBBBB of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(vii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(5)(i) through (v) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(5)(ii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(5)(i) or (ii) of this section.

(6) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in

any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program set forth in §§ 97.802 through 97.835 of this chapter, subject to the following requirements and exceptions:

(i) The provisions of paragraphs (b)(9)(i) through (viii) of this section apply to any such SIP revision.

(ii) Following promulgation of an approval by the Administrator of such a SIP revision:

(A) The provisions of the SIP revision will apply to sources in the State with regard to emissions occurring in the control period that begins May 1 immediately after promulgation of such approval, or such later control period as may be adopted by the State in its regulations and approved by the Administrator in the SIP revision, and in each subsequent control period.

(B) Notwithstanding the provisions of paragraph (b)(6)(ii)(A) of this section, if, at the time of the approval of the SIP revision, the Administrator has already started recording any allocations of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances to units in the State for a control period in any year, the Administrator will not record allocations of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances to units in the State for any such control period under the provisions of the SIP revision but instead will allocate and record CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances in place of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances under § 97.526(c)(2) of this chapter, unless provided otherwise by such approval of the SIP revision.

(7) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation provisions replacing the provisions in § 97.811(a) of this chapter with regard to the State and the control period in 2018, a list of CSAPR NO<sub>x</sub> Ozone Season Group 2 units and the amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances allocated to each unit on such list, provided that the list of units

and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2015;

(ii) The total amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocations on the list must not exceed the amount, under § 97.810(a) of this chapter for the State and the control period in 2018, of the CSAPR NO<sub>x</sub> Ozone Season Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter;

(v) Provided that:

(A) By December 27, 2016, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(7)(i) through (iv) of this section by April 1, 2017; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(7)(v)(A) of this section by April 1, 2017.

(8) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations revising subpart EEEEE of part 97 of this chapter as follows and not making any other substantive revisions of that subpart:

(i) The State may adopt, as applicability provisions replacing the provisions in § 97.804(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words "more than 25 MWe" are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the

words “more than 25 MWe” and is not less than the amount specified by the words “15 MWe or more”;

(ii) Such a State listed in § 51.121(c) of this chapter may adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include, in addition to all units in the State that would be CSAPR NO<sub>x</sub> Ozone Season Group 2 units under § 97.804(a) and (b) of this chapter and any units to which the State elects to expand applicability pursuant to paragraph (b)(8)(i) of this section, all other units that would have been subject to the State’s emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter except units to which the State is authorized to expand applicability under paragraph (b)(8)(i) of this section; and

(iii) The State may adopt, as CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation or auction provisions replacing the provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances and may adopt, in addition to the definitions in § 97.802 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO<sub>x</sub> Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to addi-

tional units pursuant to paragraph (b)(8)(ii) of this section, an additional amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances not exceeding the lesser of:

(1) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(8)(ii) of this section, of the NO<sub>x</sub> emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(8)(iv) of this section and the corresponding sums of the NO<sub>x</sub> emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO<sub>x</sub> emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(2) The portion of the emissions budget under the State’s emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(8)(ii) of this section.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 2 units covered by § 97.811(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2019 .....	June 1, 2018.
2020 .....	June 1, 2018.
2021 .....	June 1, 2019.
2022 .....	June 1, 2019.

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Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2023 .....	June 1, 2020.
2024 .....	June 1, 2020.
2025 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 2 units covered by §§97.811(b)(1) and 97.812(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(8)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter or §97.526(c) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(8)(i), (ii), or (iii) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(8)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(8)(i), (ii), or (iii) of this section.

(9) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and

(b)(7) and (8) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program set forth in §§97.802 through 97.835 of this chapter, except that the SIP revision:

(i) May adopt, as applicability provisions replacing the provisions in §97.804(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words "more than 25 MWe" are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words "more than 25 MWe" and is not less than the amount specified by the words "15 MWe or more";

(ii) In the case of such a State listed in §51.121(c) of this chapter, may adopt, as applicability provisions replacing the provisions in §97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include, in addition to all units in the State that would be CSAPR NO<sub>x</sub> Ozone Season Group 2 units under §97.804(a) and (b) of this chapter and any units to which the State elects to expand applicability pursuant to paragraph (b)(9)(i) of this section, all other units that would have been subject to the State's emissions trading program regulations approved as a SIP revision under §51.121(p) of this chapter except units to which the State is authorized to expand applicability under paragraph (b)(9)(i) of this section; and

(iii) May adopt, as CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation provisions replacing the provisions in §§97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of



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CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO<sub>x</sub> Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(9)(ii) of this section, an additional amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances not exceeding the lesser of:

(1) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(9)(ii) of this section, of the NO<sub>x</sub> emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(9)(viii) of this section and the corresponding sums of the NO<sub>x</sub> emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO<sub>x</sub> emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(2) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(9)(ii) of this section.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 2 units covered by § 97.811(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub>

Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO <sub>x</sub> Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2019 .....	June 1, 2018.
2020 .....	June 1, 2018.
2021 .....	June 1, 2019.
2022 .....	June 1, 2019.
2023 .....	June 1, 2020.
2024 .....	June 1, 2020.
2025 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances for any such control period to any CSAPR NO<sub>x</sub> Ozone Season Group 2 units covered by §§ 97.811(b)(1) and 97.812(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(9)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter or § 97.526(c) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.802 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation or auction provisions adopted under paragraph (b)(9)(iii) of this section;

(v) May substitute the name of the State for the term "State" as used in subpart EEEEE of part 97 of this chapter, to the extent the Administrator determines that such substitutions do

not make substantive changes in the provisions in §§ 97.802 through 97.835 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.802 through 97.835 of this chapter and must not include the provisions in §§ 97.811(b)(2) and (c)(5)(iii), 97.812(b), and 97.821(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.802 (definitions of "base CSAPR NO<sub>x</sub> Ozone Season Group 2 source", "base CSAPR NO<sub>x</sub> Ozone Season Group 2 unit", "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.806(c)(2), and 97.825 of this chapter and the portions of other provisions of subpart EEEEE of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(9)(i) through (vi) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(9)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(9)(i), (ii), or (iii) of this section.

(10) Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section or paragraphs (b)(1), (b)(2)(iii), and

(b)(7) and (8) of this section for sources in the State—

(i) The provisions of paragraph (b)(2)(i) or (iii) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

(ii) For a State listed in § 51.121(c) of this chapter, the State's adoption of the regulations included in such approved SIP revision will satisfy with regard to the sources subject to such regulations, including any sources made subject to such regulations pursuant to paragraph (b)(9)(ii) of this section, the requirement under § 51.121(r)(2) of this chapter for the State to revise its SIP to adopt control measures with regard to such sources.

(11) Notwithstanding the provisions of paragraph (b)(10)(i) of this section—

(i) If, at the time of such approval of the State's SIP revision, the Administrator has already started recording any allocations of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances under subpart BBBBB of part 97 of this chapter, or allocations of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, or of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances, as applicable, to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision; and

(ii) The provisions of § 97.526(c)(1) through (6) of this chapter authorizing the Administrator to remove CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances from any account where such allowances are held and to allocate and record amounts of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances in place of any CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that have been so removed or that have not been initially recorded, and the provisions of § 97.526(c)(7) of this chapter authorizing the use of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances to satisfy requirements to hold CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, will continue to apply.

(12) The following States have SIP revisions approved by the Administrator under paragraph (b)(3), (4), or (5) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(3) of this section as replacing the CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation provisions in § 97.511(a) of this chapter with regard to the State and the control period in 2016: Alabama and Missouri.

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(4) of this section as replacing the CSAPR NO<sub>x</sub> Ozone Season Group 1 applicability provisions in § 97.504(a)(1) and (2) of this chapter or the CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocation provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(13) The following States have SIP revisions approved by the Administrator under paragraph (b)(6), (7), (8), or (9) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(6) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(7) of this section as replacing the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation provisions in § 97.811(a) of this chapter with regard to the State and the control period in 2018: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(8) of this section as replacing the CSAPR NO<sub>x</sub> Ozone Season Group 2 applicability provisions in § 97.804(a) and (b) or § 97.804(a)(1) and (2) of this chapter or the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocation provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year: [none].

(iv) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(9) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

[76 FR 48354, Aug. 8, 2011, as amended at 76 FR 80774, Dec. 27, 2011; 79 FR 71671, Dec. 3, 2014; 81 FR 74586, Oct. 26, 2016]

**§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?**

(a) The CSAPR SO<sub>2</sub> Group 1 Trading Program provisions and the CSAPR SO<sub>2</sub> Group 2 Trading Program provisions set forth respectively in subparts CCCCC and DDDDD of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that

relate to emissions of sulfur dioxide (SO<sub>2</sub>).

(b) The provisions of subpart CCCCC of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States: Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.

(c) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States: Alabama, Georgia, Kansas, Minnesota, Nebraska, South Carolina, and Texas.

(d) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR SO<sub>2</sub> Group 1 allowance allocation provisions replacing the provisions in § 97.611(a) of this chapter with regard to the State and the control period in 2016, a list of CSAPR SO<sub>2</sub> Group 1 units and the amount of CSAPR SO<sub>2</sub> Group 1 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(1) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2010;

(2) The total amount of CSAPR SO<sub>2</sub> Group 1 allowance allocations on the list must not exceed the amount, under § 97.610(a) of this chapter for the State and the control period in 2016, of the CSAPR SO<sub>2</sub> Group 1 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(3) The list must be submitted electronically in a format specified by the Administrator; and

(4) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart CCCCC of part 97 of this chapter;

(5) Provided that:

(i) By October 17, 2011, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (d)(1) through (4) of this section by April 1, 2015; and

(ii) The State must submit to the Administrator a complete SIP revision described in paragraph (d)(5)(i) of this section by April 1, 2015.

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

(1) The State may adopt, as CSAPR SO<sub>2</sub> Group 1 allowance allocation or auction provisions replacing the provisions in §§ 97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO<sub>2</sub> Group 1 allowances and may adopt, in addition to the definitions in § 97.602 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR SO<sub>2</sub> Group 1 allowance allocation or auction provisions, if such methodology—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO<sub>2</sub> Group 1 allowances for any such control period not exceeding the amount, under §§ 97.610(a) and 97.621 of this chapter for the State and such control period, of the CSAPR SO<sub>2</sub> Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO<sub>2</sub> Group 1 allowances already allocated and recorded by the Administrator.

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 1 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 1 units covered by § 97.611(a) of this chapter, that the

State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR SO <sub>2</sub> Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 1 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 1 units covered by §§97.611(b)(1) and 97.612(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(iv) Does not provide for any change, after the submission deadlines in paragraphs (e)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart CCCC of part 97 of this chapter;

(2) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (e)(1) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (e)(1)(ii) and (iii) of this section applicable to the first control period for which the State wants to make allocations or hold an

auction under paragraph (e)(1) of this section.

(f) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR SO<sub>2</sub> Group 1 Trading Program set forth in §§97.602 through 97.635 of this chapter, except that the SIP revision:

(1) May adopt, as CSAPR SO<sub>2</sub> Group 1 allowance allocation or auction provisions replacing the provisions in §§97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO<sub>2</sub> Group 1 allowances and that—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO<sub>2</sub> Group 1 allowances for any such control period not exceeding the amount, under §§97.610(a) and 97.621 of this chapter for the State and such control period, of the CSAPR SO<sub>2</sub> Group 1 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO<sub>2</sub> Group 1 allowances already allocated and recorded by the Administrator.

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 1 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 1 units covered by §97.611(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-

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aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR SO <sub>2</sub> Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 1 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 1 units covered by §§97.611(b)(1) and 97.612(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 1 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(iv) Does not provide for any change, after the submission deadlines in paragraphs (f)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart CCCCC of part 97 of this chapter;

(2) May adopt, in addition to the definitions in §97.602 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR SO<sub>2</sub> Group 1 allowance allocation or auction provisions adopted under paragraph (f)(1) of this section;

(3) May substitute the name of the State for the term "State" as used in subpart CCCCC of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§97.602 through 97.635 of this chapter; and

(4) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§97.602

through 97.635 of this chapter and must not include the provisions in §§97.611(b)(2) and (c)(5)(iii), 97.612(b), and 97.621(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(5) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§97.602 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.606(c)(2), and 97.625 of this chapter and the portions of other provisions of subpart CCCCC of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(6) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (f)(1) through (4) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (f)(1)(ii) and (iii) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (f)(1) of this section.

(g) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (c) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR SO<sub>2</sub> Group 2 allowance allocation provisions replacing the provisions in §97.711(a) of this chapter with regard to the State and the control period in 2016, a list of CSAPR SO<sub>2</sub> Group 2 units and the amount of CSAPR SO<sub>2</sub> Group 2 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(1) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2010;

(2) The total amount of CSAPR SO<sub>2</sub> Group 2 allowance allocations on the list must not exceed the amount, under §97.710(a) of this chapter for the State and the control period in 2016, of the CSAPR SO<sub>2</sub> Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(3) The list must be submitted electronically in a format specified by the Administrator; and

(4) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart DDDDD of part 97 of this chapter;

(5) Provided that:

(i) By October 17, 2011, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (g)(1) through (4) of this section by April 1, 2015; and

(ii) The State must submit to the Administrator a complete SIP revision described in paragraph (g)(5)(i) of this section by April 1, 2015.

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

(1) The State may adopt, as CSAPR SO<sub>2</sub> Group 2 allowance allocation or auction provisions replacing the provisions in §§97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO<sub>2</sub> Group 2 allowances and may adopt, in addition to the definitions in §97.702 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR SO<sub>2</sub> Group 2 allowance allocation or auction provisions, if such methodology—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO<sub>2</sub> Group 2 allowances for any such control period not exceeding the amount, under §§97.710(a) and 97.721 of this chapter for the State and such control period, of the CSAPR SO<sub>2</sub> Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR SO<sub>2</sub> Group 2 allowances already allocated and recorded by the Administrator.

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 2 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 2 units covered by §97.711(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR SO <sub>2</sub> Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 2 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 2 units covered by §§97.711(b)(1) and 97.712(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(iv) Does not provide for any change, after the submission deadlines in paragraphs (h)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart DDDDD of part 97 of this chapter;

(2) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (h)(1) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (h)(1)(ii) and (iii) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (h)(1) of this section.

(i) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (c) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c), (g), and (h) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR SO<sub>2</sub> Group 2 Trading Program set forth in §§97.702 through 97.735 of this chapter, except that the SIP revision:

(1) May adopt, as CSAPR SO<sub>2</sub> Group 2 allowance allocation or auction provisions replacing the provisions in §§97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR SO<sub>2</sub> Group 2 allowances and that—

(i) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR SO<sub>2</sub> Group 2 allowances for any such control period not exceeding the amount, under §§97.710(a) and 97.721 of this chapter for the State and such control period, of the CSAPR SO<sub>2</sub> Group 2 trading budget minus the sum

of the Indian country new unit set-aside and the amount of any CSAPR SO<sub>2</sub> Group 2 allowances already allocated and recorded by the Administrator.

(ii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 2 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 2 units covered by §97.711(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR SO <sub>2</sub> Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2017 .....	June 1, 2016.
2018 .....	June 1, 2016.
2019 .....	June 1, 2017.
2020 .....	June 1, 2017.
2021 .....	June 1, 2018.
2022 .....	June 1, 2018.
2023 and any year thereafter	June 1 of the fourth year before the year of the control period.

(iii) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR SO<sub>2</sub> Group 2 allowances for any such control period to any CSAPR SO<sub>2</sub> Group 2 units covered by §§97.711(b)(1) and 97.712(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR SO<sub>2</sub> Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(iv) Does not provide for any change, after the submission deadlines in paragraphs (i)(1)(ii) and (iii) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart DDDDD of part 97 of this chapter;



(2) May adopt, in addition to the definitions in § 97.702 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR SO<sub>2</sub> Group 2 allowance allocation or auction provisions adopted under paragraph (i)(1) of this section;

(3) May substitute the name of the State for the term "State" as used in subpart DDDDD of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.702 through 97.735 of this chapter; and

(4) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.702 through 97.735 of this chapter and must not include the provisions in §§ 97.711(b)(2) and (c)(5)(iii), 97.712(b), and 97.721(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision.

(5) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.702 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.706(c)(2), and 97.725 of this chapter and the portions of other provisions of subpart DDDDD of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(6) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (i)(1) through (4) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (i)(1)(ii) and (iii) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (i)(1) of this section.

(j) Following promulgation of an approval by the Administrator of a

State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section or paragraphs (a), (c), (g), and (h) of this section for sources in the State, the provisions of paragraph (b) or (c) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(k) Notwithstanding the provisions of paragraph (j) of this section, if, at the time of such approval of the State's SIP revision, the Administrator has already started recording any allocations of CSAPR SO<sub>2</sub> Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR SO<sub>2</sub> Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the State for a control period in any year, the provisions of subpart CCCCC of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR SO<sub>2</sub> Group 1 allowances, or of subpart DDDDD of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR SO<sub>2</sub> Group 2 allowances, as applicable, to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(l) The following States have SIP revisions approved by the Administrator under paragraph (d), (e), or (f) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (d) of this section as replacing the CSAPR SO<sub>2</sub> Group 1 allowance allocation provisions in § 97.611(a) of this chapter with

regard to the State and the control period in 2016: [none].

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (e) of this section as replacing the CSAPR SO<sub>2</sub> Group 1 allowance allocation provisions in §§97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: Missouri.

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (f) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(m) The following States have SIP revisions approved by the Administrator under paragraph (g), (h), or (i) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (g) of this section as replacing the CSAPR SO<sub>2</sub> Group 2 allowance allocation provisions in §97.711(a) of this chapter with regard to the State and the control period in 2016: Alabama and Nebraska.

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (h) of this section as replacing the CSAPR SO<sub>2</sub> Group 2 allowance allocation provisions in §§97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: [none].

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (i) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c), (g), and (h) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Alabama.

[76 FR 48357, Aug. 8, 2011, as amended at 77 FR 10334, Feb. 21, 2012; 79 FR 71671, Dec. 3, 2014; 81 FR 74586 and 74591, Oct. 26, 2016]

## Subpart B—Alabama

### § 52.50 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for Alabama under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 1, 2008, for Alabama was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the FEDERAL REGISTER. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 1, 2008, for Alabama will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303 the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566-1742. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) EPA Approved Alabama Regulations.