6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA-HQ-OAR-2016-0202; FRL-9986-53-OAR]

RIN 2060-AS82

Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing nonattainment area and ozone transport region (OTR) implementation requirements for the 2015 ozone national ambient air quality standards (NAAQS) (2015 ozone NAAQS) that were promulgated on October 1, 2015. This final rule is largely an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS, and we are retaining without significant revision the majority of those provisions to implement the 2015 ozone NAAQS. This final rule addresses a range of nonattainment area and OTR state implementation plan (SIP) requirements for the 2015 ozone NAAQS, including attainment demonstrations, reasonable further progress (RFP) and associated milestone demonstrations, reasonably available control technology (RACT), reasonably available control measures (RACM), major nonattainment new source review, emissions inventories, the timing of required SIP submissions and compliance with emission control measures in the SIP. The EPA is not taking any final action regarding our proposed approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the agency intends to address any

revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking.

DATES: This final rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No. EPA-HQ-OAR-2016-0202. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further general information on this final rule, contact Mr. Robert Lingard, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, at (919) 541-5272 or *lingard.robert@epa.gov*; or Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541-5208 or *stackhouse.butch@epa.gov*. For information on the Information Collection Request (ICR), contact Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541-5208 or *stackhouse.butch@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

ACT	Alternative Control Techniques
AERR	Air Emissions Reporting Requirements
AVERT	AVoided Emissions geneRation Tool
BSMP	Basic Smoke Management Practices

CAA	Clean Air Act
CFR	Code of Federal Regulations
CO	Carbon Monoxide
CTG	Control Techniques Guidelines
DOI	Department of the Interior
DOT	Department of Transportation
EE/RE	Energy Efficiency and Renewable Energy
EMFAC	EMission FACtors Model
EPA	Environmental Protection Agency
FLM	Federal Land Managers
FR	**Federal Register**
ICR	Information Collection Request
I/M	Inspection and Maintenance
IPT	Interprecursor Trade or Interprecursor Trading
MCD	Milestone Compliance Demonstration
MOVES	MOtor Vehicle Emissions Simulator
NAAQS	National Ambient Air Quality Standards
NNSR	Nonattainment New Source Review
NO_X	Nitrogen Oxides
O_3	Ozone
OAQPS	Office of Air Quality Planning and Standards
OMB	Office of Management and Budget
OTR	Ozone Transport Region
PAMS	Photochemical Assessment Monitoring Station
$PM_{2.5}$	Fine Particulate Matter
ppm	Parts per Million
PRA	Paperwork Reduction Act
PTE	Potential to Emit
PUC	Public Utility Commission
RACM	Reasonably Available Control Measures
RACT	Reasonably Available Control Technology
RFP	Reasonable Further Progress
ROP	Rate of Progress
RPS	Renewable Portfolio Standard
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
tpy	Tons per Year
TAR	Tribal Authority Rule
TAS	Treatment as a State
TGD	Technical Guidance Document
TIP	Tribal Implementation Plan
USB	U.S. Background
U.S.C.	United States Code
USDA	U.S. Department of Agriculture
VOC	Volatile Organic Compounds

B. Does this action apply to me?

Entities potentially affected directly by this final rule include state, local and tribal governments and air pollution control agencies ("air agencies") responsible for attainment and maintenance of the NAAQS. Entities potentially affected indirectly by this final rule as regulated sources include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) that contribute to ground-level ozone formation.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *http://www.epa.gov/ozone-pollution*.

D. How is this notice organized?

The information presented in this notice is organized as follows:

II. Background and Summary of Final Rule

On October 1, 2015, the EPA promulgated revisions to the primary and secondary NAAQS for ozone, setting them at a level of 0.070 parts per million (ppm)[1] (*see* 80 FR 65292). Since the 2015 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as "the 2015 ozone NAAQS" or "the 2015 ozone standards." The 2015 ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008.

Following revisions to a NAAQS, the EPA and air agencies work together to implement the revised NAAQS. To assist air agencies, the EPA considers the extent to which existing EPA regulations and guidance are sufficient to implement the standard and whether any revisions or updates to those regulations and guidance would be helpful or appropriate in facilitating the implementation of the revised standard by air agencies and regulated entities. The Clean Air Act (CAA or Act) does not require that the EPA promulgate new or revised implementing regulations or guidance when a NAAQS is revised. However, in certain circumstances, the EPA has determined that revisions to implementing regulations are necessary to ensure that the CAA's requirements are clear for both air agencies and regulated entities. Air agencies are required to submit SIPs, as provided in the CAA and in EPA regulations. It is important to note that the existing EPA regulations in title 40 part 51 of the Code of Federal Regulations (CFR) applicable to SIPs generally and to particular pollutants (*e.g.*, ozone and its precursors) continue to apply even if these regulations are not updated.

The 1990 CAA Amendments contained ozone NAAQS implementation provisions that were specific to the then-current 1-hour ozone NAAQS, including regulatory provisions and SIP-related deadlines that do not directly apply to the revised 8-hour ozone NAAQS. To fill the

[1] Annual fourth highest daily maximum 8-hour average concentration, averaged over 3 years. For a detailed explanation of the calculation of the 3-year 8-hour average, *see* 40 CFR part 50, Appendix P.

resulting statutory gaps and provide other needed regulatory guidance, the EPA has promulgated several iterations of implementing regulations for the 8-hour ozone NAAQS that was issued by the EPA in 1997 and revised in 2008. For purposes of the 2015 ozone NAAQS, the EPA is generally applying the overall framework and policy approach of the implementation provisions associated with the previous 8-hour NAAQS, with the exception of elements addressed in the adverse portions of the D.C. Circuit's February 2018 decision in *South Coast Air Quality Management District v. EPA* (discussed later in this preamble), to provide for regulatory certainty and consistent implementation across time. This overall regulatory framework and policy approach has been developed over time with input from numerous stakeholders, including the states responsible for fulfilling the CAA's NAAQS implementation requirements under the CAA's system of cooperative federalism. The framework and policy approach have also been significantly informed by numerous court opinions rendered on specific regulatory provisions, where the EPA's initial interpretation of the CAA's ozone implementation requirements was vacated or otherwise restricted.

An initial step in implementing a revised NAAQS is the process in which states and some tribes recommend area designations (*i.e.*, as nonattainment, attainment or unclassifiable) to the EPA. The EPA then evaluates air quality data and other factors prior to making our proposed and final determinations regarding area designations. Areas designated as nonattainment for a revised ozone NAAQS are classified (*i.e.*, as Marginal, Moderate, Serious, Severe or Extreme) according to the severity of the nonattainment at the time of designation (as determined based on the area's

"design value" (DV)).[2] The EPA has already finalized in a separate action the air quality thresholds corresponding with, and attainment dates for, each level of nonattainment area classification for the 2015 ozone NAAQS (*see* 83 FR 10376; March 9, 2018), which were then applied when the EPA promulgated final nonattainment area designations for that standard (*see* 83 FR 25766; June 4, 2018 (for most of the U.S.); 83 FR 35136; July 25, 2018 (for the San Antonio, Texas area)).

On November 17, 2016, the EPA solicited public comment on proposed revisions to the ozone NAAQS implementing regulations as they apply to the 2015 ozone NAAQS, including the nonattainment area classification scheme and SIP requirements, in a notice of proposed rulemaking (NPRM) (81 FR 81276). The public comment period for the NPRM ran from November 17, 2016, to February 13, 2017. The EPA received a total of 79 comment submissions on the NPRM. As explained previously, those comments relating to the nonattainment area classifications scheme were addressed in a separate action in March 2018 finalizing those classifications (*see generally* 83 FR 10376). The preamble to this final rule discusses significant comments received on the SIP requirements portion of the NPRM and how those comments were considered by the EPA in general terms. The accompanying Response to Comments document provides more detailed responses to the comments received. The public comments received on the NPRM and the EPA's Response to Comments document are posted in the docket at *http://www.regulations.gov* (Docket ID No. EPA-HQ-OAR-2016-0202).

We are finalizing submittal deadlines and specific CAA requirements for the content of nonattainment area and OTR SIPs for the 2015 ozone NAAQS in this rule. As a general matter,

[2] The air quality DV for the 8-hour ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average concentration for a specific monitor. When an area has multiple monitors, the area's DV is determined by the individual monitor with the highest DV.

this final rule follows the same basic principles and approach that the EPA applied to interpret the CAA's part D ozone nonattainment area requirements in developing the implementation rule for the 2008 ozone NAAQS.[3]

In the NPRM, the EPA also proposed and sought comment on two alternative approaches for revoking the 2008 ozone NAAQS for all purposes and, where applicable, establishing anti-backsliding requirements. The first approach to revoking the 2008 ozone NAAQS would parallel the approach used in revoking the 1-hour and 1997 ozone NAAQS. Under this first approach, the 2008 ozone NAAQS would be revoked at essentially the same time for all areas of the U.S., and a set of protective anti-backsliding requirements would be promulgated for all areas that are designated nonattainment for the 2008 and 2015 NAAQS as of 1 year after the effective date of designation for the 2015 ozone NAAQS. Under the second approach, the 2008 ozone NAAQS would not be revoked in any area designated nonattainment for the 2008 ozone NAAQS until that area is redesignated to attainment with an approved CAA section 175A 10-year maintenance plan; the 2008 ozone NAAQS would in no case be revoked earlier than 1 year after the effective date of designation for the 2015 ozone NAAQS. The 2008 ozone NAAQS would be revoked in all other areas 1 year after the effective date of designation for the 2015 ozone NAAQS.

The EPA's approach to revoking the 1997 ozone NAAQS was challenged in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018) (hereinafter referred to as *South Coast II*). On February 16, 2018, the D.C. Circuit issued a partially adverse decision in that case. The EPA is currently assessing the implications of the decision on those aspects of the proposal regarding revocation of the 2008 ozone NAAQS. Thus, the EPA is not acting today on

[3] *See* "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (80 FR 12264; March 6, 2015), hereafter referred to as the 2008 Ozone NAAQS SIP Requirements Rule.

any of the proposed revocation options of the 2008 ozone NAAQS or any proposed anti-backsliding requirements. The EPA intends to address any revocation of the 2008 ozone NAAQS, and any potential anti-backsliding requirements in a separate future rulemaking.

Regarding the format of this preamble, on topics where we made a specific proposal, we include detailed information about what we proposed, what we are finalizing and our rationale, as well as responses to significant comments. As stated previously, we are retaining without significant revision the majority of existing implementing regulations associated with the 2008 ozone NAAQS for purposes of implementing the 2015 ozone NAAQS, as discussed in Section III of this preamble. We discuss those aspects of existing implementing regulations that we are revising for purposes of implementing the 2015 ozone NAAQS in Section IV of this preamble. Section V of this preamble addresses several topics, relevant to implementing of the 2015 ozone NAAQS, on which we solicited public comment in the November 2016 proposal, but for which we are not promulgating any specific revisions to the agency's implementing regulations at this time.

III. Provisions of the 2008 Ozone NAAQS Implementing Regulations to be Retained Without Significant Revision

For purposes of implementing the 2015 ozone NAAQS, we are retaining without significant revision the majority of regulatory provisions previously promulgated for purposes of implementing the 2008 ozone NAAQS. The classification and SIP requirement provisions for the 2008 standards were codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards will now be codified in subpart CC of part 51.

A. Submission Deadlines and Form for Nonattainment Area and OTR SIP Elements Due Under CAA Sections 182 and 184

1. Deadlines for Submitting Nonattainment Area and OTR SIP Elements

a. Summary of Proposal. The EPA proposed to retain our existing approach to establishing deadlines for submitting ozone nonattainment area SIP elements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's current approach and rationale for SIP element submittal deadlines (80 FR 12265; March 6, 2015).

b. Final Rule. The EPA is adopting the proposed approach for establishing deadlines for submitting nonattainment area SIP elements under CAA section 182 for the 2015 ozone NAAQS, based on the approach and rationale articulated in the final 2008 Ozone SIP Requirements Rule. Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time periods after November 15, 1990 (the date of enactment of the 1990 CAA Amendments). For the 2015 ozone NAAQS, the EPA is retaining the approach adopted for the 2008 ozone NAAQS: the SIP elements listed will generally be due, with the limited exceptions discussed later, according to the timeframes provided for those SIP elements in CAA section 182, but measured from the effective date of nonattainment designation rather than from November 15, 1990.

Accordingly, states with areas designated nonattainment have: 2 years from the effective date of a nonattainment designation to submit SIP revisions addressing emissions inventories (required by CAA section 182(a)(1)), RACT (CAA section 182(b)(2)) and emissions statement regulations[4] (CAA section 182(a)(3)(B)); 3 years from the effective date of nonattainment designation to submit SIP revisions addressing 15 percent rate of progress (ROP) plans (CAA section 182(b)(1)) and Moderate area attainment demonstrations (CAA section 182(b)(1)); and 4

[4] *See* Section IV.E of this preamble for additional information on emissions statements.

years from the effective date of nonattainment designation to submit SIP revisions addressing 3 percent per year[5] RFP plans (CAA section 182(c)(2)) and attainment demonstrations for Serious and higher classified areas (CAA section 182(c)(2)), where applicable. If an area is subject to vehicle inspection and maintenance (I/M) program requirements based on its classification, the SIP revision due date for the I/M requirements is already codified in 40 CFR 51.372(b)(2) and is aligned with the due date for the attainment demonstration SIP for the area (*i.e.*, either 3 or 4 years from the effective date of nonattainment designation, depending on the area's classification: 3 years for Moderate areas, 4 years for Serious and higher).

SIP revisions addressing CAA section 185 penalty fee programs in areas initially classified Severe or Extreme are due 10 years from the effective date of nonattainment designation. The 10-year submittal deadline is consistent with section 182(d)(3) of the CAA, which provided slightly more than 10 years for submission of the fee program SIP revision for areas designated as nonattainment and classified as Severe or Extreme by operation of law in 1990 for the 1-hour ozone NAAQS.

SIP submissions addressing nonattainment new source review (NNSR) permit program requirements applicable to the 2015 ozone NAAQS are due 3 years from the effective date of nonattainment designation *(see* new 40 CFR 51.1314). This is consistent with the approach articulated in the 2008 Ozone NAAQS SIP Requirements Rule. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions "no later than 3 years from the date of the nonattainment designation."

[5] The 3 percent per year RFP plans are typically submitted in 3-year increments, *i.e.* as 9 percent RFP plans that produce average reductions of 3 percent of baseline emissions per year.

We note also that the EPA's past implementing regulations for revised ozone NAAQS have required OTR states to submit RACT SIP revisions based on the timeframe provided in CAA section 184 as measured from the effective date of designations made pursuant to those revised NAAQS, rather than from November 15, 1990. This requirement was first codified in 40 CFR 51.916 for the 1997 ozone NAAQS, and later codified for the 2008 ozone NAAQS in 40 CFR 51.1116. Under those provisions, states in the OTR are required to submit SIP revisions addressing the RACT requirements of CAA section 184 no later than 2 years after the effective date of designations for nonattainment areas for the revised ozone NAAQS. The EPA is adopting these same general requirements for the 2015 ozone NAAQS (*see* Section III.J of this preamble).

c. Comments and Responses. Comment: The only adverse comment the EPA received regarding the proposed submittal dates for SIP elements for the 2015 ozone NAAQS specifically pertained to the proposed 3-year schedule for submitting new or revised SIP elements addressing NNSR program requirements. The commenter, objecting to the proposed 3-year NNSR SIP due date, claimed that such a timeframe is contrary to CAA section 182(a)(2)(C), which, based on the commenter's interpretation, affords 2 years for nonattainment areas to submit their NNSR permit requirements SIP. The EPA received support for the proposed 3-year NNSR SIP revision deadline from two air agency commenters.

Response: The EPA disagrees with the commenter's argument that a 2-year maximum deadline for NNSR plans for the 2015 ozone NAAQS is required by the CAA. The commenter argues that a 2-year deadline is mandated under provisions contained in CAA section 182. As explained in the 2008 Ozone NAAQS SIP Requirements Rule (*see* 80 FR 12267, March 6, 2015), and the 2015 Ozone NAAQS Implementation Rule Proposal (*see* 80 FR 81278, November 17, 2016), the EPA recognized that CAA section 182(a)(2)(C)(i), under the heading

‘‘Corrections to the State implementation plans—Permit programs,’’ contains a requirement for states to submit SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within 2 years after the date of enactment of the 1990 CAA Amendments. The EPA continues to support the interpretation of the statute that the submission of NNSR SIPs due on November 15, 1992, *i.e.*, the date 2 years after enactment of the 1990 CAA Amendments, fulfilled this statutory "corrections" requirement. The plan submittal schedules set forth in the 1990 CAA Amendments at section 182(a)(2) were applicable to the then existing 1-hour ozone NAAQS, and Congress intended them to address SIP-related transition issues unique to the transition from provisions "as in effect immediately before November 15, 1990" to provisions in the newly enacted 1990 CAA Amendments.

The CAA, in the generally applicable subpart 1 provisions of Part D of Title I, specifically section 172(b), provides a submittal schedule for plan revisions following the EPA's promulgation of "the designation of an area as nonattainment with respect to a national ambient air quality standard…." *See* 42 U.S.C. 7502(b). At the time of the 1990 CAA Amendments, designations for the 1-hour ozone NAAQS were already in existence for all areas of the country – including nonattainment areas. The 1990 CAA Amendments under Title I Part D Subpart 2 added increased programmatic controls and a tiered classification structure on top of the existing ozone nonattainment designations, imposing still more SIP submission requirements on the higher classified areas. Given the existing NNSR programs developed under prior statutory authority, it is reasonable to believe that Congress thought that the initial NNSR SIP corrections required under the newly created section 182(a)(2)(C) could be developed and submitted to the EPA quickly. The EPA continues to support the interpretation of the statute that the submission of "corrections to the SIP," including NNSR SIPs, due on November 15, 1992, fulfilled the

statutory requirement addressing the SIP revisions associated with the 1-hour ozone standard. Hence, the EPA continues to support the interpretation that the general NAAQS implementation provisions in CAA subpart 1 at section 172(b) govern when the EPA establishes a deadline for the submittal of NNSR SIP revisions that are triggered by ozone NAAQS revisions occurring after November 15, 1990.

2. Form and Content of Nonattainment and OTR SIP Element Submissions Required Under a Revised NAAQS

a. Summary of Proposal. The EPA proposed to retain our existing CAA interpretation that air agencies are required to submit all nonattainment SIP elements applicable for an area's classification following revision of the NAAQS. The EPA also took comment on an option for air agencies to submit a certification statement for previously approved SIP elements. When submitting SIP elements, air agencies may certify that an existing regulation is adequate to meet certain nonattainment area planning requirements for a revised ozone NAAQS, in lieu of submitting a new revised regulation.

b. Final Rule. The EPA is finalizing the proposed requirements. We continue to interpret the general SIP requirements of subpart 1 of Part D of Title I and the specific nonattainment area planning requirements of CAA section 182 to require air agencies to submit a SIP element to meet each nonattainment area planning requirement for the 2015 ozone NAAQS. Many air agencies already have regulations in place to address certain nonattainment area planning requirements due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it

is sufficient to fulfill obligations triggered by the revised ozone NAAQS.[6] For example, a state may have an emissions statement regulation (per CAA section 182(a)(3)(B)) that has been previously approved by the EPA for a prior ozone NAAQS that covers all the state's nonattainment areas and relevant classes and categories of sources for the 2015 ozone NAAQS, and that is likely to be sufficient for purposes of meeting the emissions statement requirement for the 2015 ozone NAAQS. Where an air agency determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements of CAA section 182 (or OTR RACT requirements of CAA section 184) for a revised ozone NAAQS, that air agency's SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations. The EPA has acted on similar certifications in the past. *See e.g.,* 83 FR 26221 (June 6, 2018) (explaining that the EPA is approving Pennsylvania's certification that the state's previously approved emissions statement regulation meets the requirements of CAA section 182(a)(3)(B) for the 2008 ozone standards). Other previously approved nonattainment SIP elements that may be sufficient for purposes of an area that has been designated nonattainment for a revised ozone NAAQS might include (but are not necessarily limited to): NNSR, vehicle I/M programs and clean fuels requirement for boilers.

An air agency choosing to provide a written certification in lieu of submitting a new or revised regulation must provide the certification to the EPA qualifying as a SIP revision in accordance with CAA section 110 and 40 CFR 51.102, 103 and part 51 Appendix V. An air agency should identify the related applicable requirements and explain how each is met for the revised ozone NAAQS by the regulation previously approved for a prior ozone NAAQS. The

[6] This review should include determining whether the nonattainment area boundary for the current ozone NAAQS is consistent with the boundary for the previous standards.

purpose of the statement is to demonstrate compliance with the nonattainment area planning requirements for the new NAAQS. These written statements must be treated in the same manner as any other SIP submission and must be provided to the EPA in accordance with applicable SIP submission requirements and deadlines.

In cases where a previously approved regulation is modified for any reason, or where no regulation exists, air agencies must provide the new or modified regulation as a SIP submission. This would include new or modified RACT provisions for states with nonattainment areas and states in an OTR resulting from a new review of major source emission controls.

c. Comments and Responses. Comment: Several commenters objected to the EPA's expectation that states certify the adequacy of previously approved SIP elements for a revised NAAQS with written statements, through the same process as other SIP revisions. They argue the certification process is redundant and therefore a waste of resources because the EPA already has several processes to ensure that states meet CAA section 110 planning obligations including infrastructure SIPs. Two commenters supported the EPA's option for SIP certification statements, citing its benefits in streamlining the SIP development process.

Response: The EPA disagrees with commenters that SIP certification statements triggered by a NAAQS revision are redundant and already accomplished through other SIP processes, including infrastructure SIPs. As noted previously, we continue to interpret the general SIP requirements of CAA section 110 and specific nonattainment planning requirements of CAA section 182 to require an air agency to provide a SIP submission to meet each nonattainment area planning requirement for a revised ozone NAAQS. To the extent that commenters suggest the EPA should adopt a general presumption of adequacy for previously approved SIP elements, we disagree. We note in particular that the infrastructure SIP submission

triggered by a NAAQS revision provides the public and the EPA an opportunity to review the basic structure of a state's air quality management program and is not intended—nor can it be presumed—to address the adequacy of individual nonattainment SIP elements for purposes of the revised NAAQS.

The submission of individual nonattainment SIP elements for purposes of the revised NAAQS provides the public and the EPA an opportunity to review and comment upon each element of a nonattainment SIP. If the air agency reviews an existing SIP element and concludes it does not need to be revised in light of the new NAAQS, submission of a certification SIP allows the public to review the air agency's assessment and provide comment on any changes they may think necessary. The EPA then also has an opportunity to review the air agency's assessment and ensure that it is consistent with CAA requirements in relation to the revised 2015 ozone NAAQS.

As noted by other commenters, the certification statement option is intended to streamline the SIP submission process, providing air agencies with the flexibility to address multiple SIP elements in a single certification statement, and combine the SIP certification action with other actions subject to public notice and comment. The EPA does not believe that developing and submitting certification SIP elements will be a significant and unnecessary drain on state resources.

B. Redesignation to Nonattainment Following Initial Designations

1. Summary of Proposal

The EPA proposed to retain our existing requirements concerning SIP-related deadlines for areas initially designated attainment for a current ozone NAAQS and subsequently

redesignated to nonattainment for the same standards. These requirements are codified for the 2008 ozone NAAQS at 40 CFR 51.1106.

2. Final Rule

The EPA is finalizing the proposed requirements. The newly adopted provisions, codified at 40 CFR 51.1306, generally allow an extension of any absolute, fixed date applicable to SIP requirements under part 51—excluding attainment dates—equal to the length of time between the effective date of the initial designation for the NAAQS and the effective date of the redesignation, unless otherwise provided in the implementation provisions for the 2015 ozone NAAQS.[7] The maximum attainment date for a redesignated area would be based on the area's classification.

3. Comments and Responses

The EPA received no adverse comments on the proposed requirements.

C. Determining Eligibility for 1-Year Attainment Date Extensions for the 2015 Ozone NAAQS Under CAA Section 181(a)(5)

1. Summary of Proposal

The EPA proposed to retain our existing approach for eligibility criteria for 1-year attainment date extensions under CAA section 181(a)(5). These criteria are codified for the 1997 ozone NAAQS in 40 CFR 51.907 and for the 2008 ozone NAAQS in 40 CFR 51.1107, and we proposed to retain the same approach for purposes of the 2015 ozone NAAQS.

[7] For example, the adopted RACT provisions at 40 CFR 51.1312(a)(3)(ii) for reclassified nonattainment areas (which would include areas redesignated to nonattainment) require that RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier (*see* Section IV.B of this preamble).

2. Final Rule

The EPA is finalizing the proposed approach. Under the newly adopted provisions, codified at 40 CFR 51.1307, an area that fails to attain a specific ozone NAAQS by its attainment date would be eligible for the first 1-year extension if, for the attainment year, the area's fourth highest daily maximum 8-hour average is at or below the level of the standards. The area would be eligible for the second 1-year extension if the area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is at or below the level of the standards. For the second 1-year extension, the area's fourth highest daily maximum 8-hour average for each year (the attainment year and the first extension year) must be determined using the monitor which, for that year, has the fourth highest daily maximum 8-hour average of all the monitors that represent that area (*i.e.*, the area's fourth highest daily maximum 8-hour average for each year could be derived from a different monitor).

In addition to demonstrating that an area meets these general eligibility criteria, an air agency must demonstrate that it has complied with all requirements and commitments pertaining to the area in the applicable SIP, per CAA section 181(a)(5)(A). Given the state and federal partnership in implementing the CAA, it is reasonable for the EPA to interpret CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of our state counterparts, and the EPA has long interpreted the provision to be satisfied by such statements.[8] In practice, in conjunction with a request for an extension, a state air agency's Executive Officer, or other senior individual with equivalent responsibilities, signs and affirms that the state is complying with its applicable federally approved SIP.

[8] *See* "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, U.S. EPA, February 3, 1994.

3. Comments and Responses

Comment: The EPA received general support for retaining the current 1-year attainment date extension approach. One commenter requested that either the EPA codify clear and specific instructions on the criteria that must be met, beyond the monitoring requirements in proposed section 51.1307, or that the EPA update guidance for ozone to correspond with the carbon monoxide (CO) attainment date extension guidance[9] since the EPA ties consideration of an attainment date extension for CO to a state's "substantial" efforts to reduce emissions.

Response: We disagree with the commenter that the EPA should codify instructions or develop separate guidance for granting attainment date extensions under an ozone NAAQS. CAA section 181(a)(5)(A) requires a state to have complied with all applicable SIP requirements and commitments to qualify for an attainment date extension. As discussed previously, the EPA has long interpreted CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of our state counterparts that a state has complied with all applicable ozone SIP requirements and commitments to qualify for an attainment date extension. In practice, we have found this approach for ozone NAAQS implementation to be reasonable and sufficient, and do not intend to develop separate 1-year attainment deadline extension guidance for the ozone NAAQS at this time.

D. Modeling and Attainment Demonstration Requirements

1. Summary of Proposal

[9] The CO guidance referenced is contained in the Sally Shaver memo, "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas" (10/23/95), available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19951023_shaver_attainment_extension_co_naa.pdf*.

The EPA proposed to retain our existing modeling and attainment demonstration requirements, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1108, and to establish criteria and due dates for attainment demonstrations and implementation of control measures for the 2015 ozone NAAQS. Due dates for attainment demonstrations are established relative to the effective date of area designations, and all control measures in the attainment demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding specific RACT and/or RACM implementation deadline requirements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of attainment demonstration elements and related modeling protocols (80 FR 12268; March 6, 2015). The EPA's current procedures for modeling are well developed and described in the EPA's "Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze" (November 2018).[10]

2. Final Rule

The EPA is finalizing modeling requirements as outlined in the proposal, and adopted at 40 CFR 51.1308. The EPA continues to believe the modeling requirements established in the final 2008 Ozone NAAQS SIP Requirements Rule are reasonable, primarily because photochemical modeling is generally available and reasonable to employ. However, this requirement also explicitly allows for another analytical method, determined by the Administrator to be at least as effective as photochemical modeling, to be substituted for or used to supplement a photochemical modeling-based assessment of an emissions control strategy. Any alternative analysis should be based on technically credible methods that allows for the timely

[10] Modeling guidance, tools and supporting documents for SIP attainment demonstration are available at: *http://www3.epa.gov/scram001/guidance_sip.htm*.

submittal of the attainment demonstration. States should review the EPA modeling guidance[11] and consult their appropriate EPA Regional office before proceeding with alternative analyses. Under CAA section 182(a), states are not required to submit an attainment demonstration SIP for Marginal areas. The EPA offers assistance to states as they consider the most appropriate course of action for Marginal areas that may be at risk of failing to meet the NAAQS within the applicable 3-year timeframe. If necessary, states can choose to adopt additional controls for such areas or they can request a voluntary reclassification to a higher classification category. The EPA believes that voluntary reclassification for areas that are not likely to attain by their attainment date may facilitate quicker attainment, including through the development of the attainment plans required of Moderate and higher classified areas.

3. Comments and Responses

Comment: One commenter stated that the EPA should finalize our 2014 draft modeling guidance. Another commenter stated that the use of photochemical grid modeling (or equivalent) for attainment demonstrations should be left to a state's discretion.

Response: The EPA acknowledges the need to update modeling guidance and has recently released an updated (November 2018) version, as described previously.

In regard to the use of photochemical grid modeling, the EPA is retaining the same modeling and attainment demonstration requirements as established in the final 2008 Ozone NAAQS SIP Requirements Rule. CAA section 182(c)(2)(A) contains specific requirements for states to use photochemical modeling or another analytical method determined to be at least as

[11] The modeling guidance can be found in the EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' available at: *https://www3.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*.

effective in their SIPs for Serious and higher classified nonattainment areas. Since photochemical modeling is the most scientifically rigorous technique to determine NO_X and/or VOC emissions reductions needed to show attainment of the NAAQS and is readily available, we are requiring photochemical modeling (or another analytical method determined to be at least as effective) for all attainment demonstrations (including Moderate areas). We continue to believe that photochemical modeling is the most technically credible method of estimating future year ozone concentrations based on projected VOC and NO_X precursor emissions.

E. Requirements for RFP

1. Summary of Proposal

The EPA proposed in general to retain our existing approach for RFP requirements and to add new regulatory provisions codifying statutory requirements for RFP milestone compliance demonstrations (MCDs) (*see* Section IV.A of this preamble). The EPA also sought comment on requiring states to use the year of an area's designation as nonattainment as the baseline year for the emissions inventory for the RFP requirement.

The existing RFP requirements for the 2008 ozone NAAQS are codified in 40 CFR 51.1110 and are organized by the following major subjects: submission deadline for SIP revisions; RFP requirements for affected areas;[12] creditability of emission control measures; creditability of out-of-area emissions reductions; calculation of non-creditable emissions reductions; and baseline emissions inventories for RFP plans. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale

[12] 40 CFR 51.1110(a)(2)-(4) establish three separate sets of RFP requirements for: 1) areas with an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan; 2) areas for which an approved 15 percent VOC ROP plan for the 1-hour or 1997 ozone NAAQS exists for only a portion of the area; and 3) areas without an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan.

and approach for how air agencies can provide for RFP in their nonattainment SIPs (80 FR 12271; March 6, 2015).

In general terms, ozone nonattainment areas must achieve RFP toward attainment of the ozone NAAQS, as established in the RFP provisions of subparts 1 and 2 of part D of the CAA. Section 172(c)(2) of subpart 1 requires that nonattainment SIPs must provide for RFP, defined in CAA section 171(1) as "such annual incremental reductions in emissions" as required by CAA part D or as required by the Administrator for ensuring attainment of the NAAQS. Subpart 2 establishes specific percent reduction targets for ozone nonattainment areas. For Moderate and higher classified areas, CAA section 182(b)(1) requires a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990 (this RFP requirement is also referred to as ROP). The 15 percent ROP requirement must be met by the end of the 6-year period regardless of when the nonattainment area attains the NAAQS. For an area that already has an approved SIP providing for the 15 percent ROP requirement for VOC under either the 1-hour ozone NAAQS or a prior 8-hour ozone NAAQS, the EPA proposed that the area would not need to meet that requirement again. Instead, such areas would be treated like areas covered under CAA section 172(c)(2) if they are classified as Moderate for the 2015 ozone NAAQS. The EPA proposed to retain our existing interpretation of CAA section 172(c)(2) to require such areas to obtain 15 percent reductions in ozone precursor emissions over the first 6 years after the baseline year. For areas classified Serious and higher, the EPA proposed to retain our existing interpretation of CAA section 182(c)(2)(B) to require such areas to obtain 18 percent ozone precursor emission reductions in that 6-year period.[13] For areas classified Serious and

[13] Similar interpretations were made for the 1997 ozone NAAQS in the Phase 2 Ozone Implementation Rule (70 FR 71615, November 29, 2005), which were upheld in *NRDC v. EPA*,

higher, CAA section 182(c)(2)(B) requires an additional 3 percent per year reduction from baseline VOC emissions, averaged over consecutive 3-year periods, beginning 6 years after November 15, 1990, and applying each year until the attainment date. CAA section 182(c)(2)(B) also allows NO_X reductions to be substituted for VOC reductions under certain conditions to meet the 3 percent per year RFP requirement.

The EPA proposed that the default baseline year for RFP would be the calendar year for the most recently available triennial emissions inventory at the time ROP/RFP plans are developed (*e.g.*, 2017 for initial designations effective in 2018). We further proposed that states may use an alternative year (*i.e.*, a year other than 2017) between the year of the revised NAAQS issuance (2015) and the year in which nonattainment designation is effective. Consistent with our approach for the 2008 ozone NAAQS, we proposed that all states associated with a multi-state nonattainment area must consult and agree on a single RFP baseline year for the area. The EPA also invited comment on an alternative approach of requiring that states use the year of the effective date of an area's designation as the baseline year for the emissions inventory for the RFP requirements.

2. Final Rule

The EPA is finalizing most aspects of our proposals for implementing the CAA's RFP provisions for purposes of the 2015 ozone NAAQS, as adopted at 40 CFR 51.1310. In general, the EPA is following essentially the same interpretation of CAA subpart 2 requirements for RFP as was applied to areas for the 2008 and 1997 8-hour ozone standards, with exceptions noted in this section. Areas classified Moderate for the 2015 ozone NAAQS that had SIPs previously

---

571 F.3d 1245 (D.C. Cir. 2009), and for the 2008 ozone NAAQS in the 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12271, March 6, 2015), which were upheld in *South Coast II*, 882 F.3d 1138 (D.C. Cir. 2018).

approved to meet the ROP requirements for the 1-hour, 1997 8-hour or 2008 8-hour ozone NAAQS would be treated like areas covered under CAA section 172(c)(2), and would need to meet the 3 percent per year RFP requirements under CAA section 182(c)(2)(B) if they are classified Serious or higher for the 2015 standards. For the purposes of the 2015 ozone NAAQS, the EPA continues to interpret CAA section 172(c)(2) as requiring Moderate areas with an approved SIP under the 1-hour ozone NAAQS or prior 8-hour ozone NAAQS to achieve 15 percent ozone precursor (NO_X and/or VOC) emission reductions over the first 6 years after the RFP baseline year for the 2015 ozone NAAQS. For areas classified Serious and higher, the EPA continues to interpret CAA section 182(c)(2)(B) to require such areas to obtain 18 percent ozone precursor emission reductions in that 6-year period. This interpretation was recently upheld in a challenge to the 2008 Ozone NAAQS SIP Requirements Rule in *South Coast II,* 882 F.3d at 1153. The EPA also continues to interpret CAA section 182(c)(2)(B) for the 2015 ozone NAAQS as requiring an additional 3 percent per year reduction from baseline emissions, averaged over consecutive 3-year periods, beginning 6 years after the RFP baseline year, and applying each year until the attainment date.

For the RFP baseline year for the 2015 ozone NAAQS, we are specifying that the baseline year shall be the calendar year for the most recently available triennial emissions inventory preceding the year of the area's effective date of designation as a nonattainment area. This approach was recently upheld by the D.C. Circuit in *South Coast II*. Alternatively, states may choose to use the year that corresponds with the year of the effective date of an area's nonattainment designation for the RFP baseline year.

For purposes of the 2008 ozone NAAQS, the EPA selected 2011 as a baseline year because it is tied to the 3-year statutory cycle for emissions inventories, and preceded the year in

which nonattainment area designations for the 2008 ozone NAAQS were effective (*i.e.*, 2012). The D.C. Circuit in *South Coast II* upheld this approach as reasonable, because the chosen baseline year was tied to the triennial emissions inventory states must prepare. *South Coast II*, 882 F.3d at 1152. Further, we note that the EPA has historically interpreted RFP "baseline emissions" (CAA section 182(b)(1)(B)) as corresponding with the initial emissions inventory in CAA section 182(a) (*see, e.g.*, 80 FR 12290; March 6, 2015).[14] For an ozone NAAQS revision occurring after the CAA was amended in 1990, we interpret the periodic triennial inventory required by CAA section 182(a)(3) as effectively supplanting the initial emissions inventory required by CAA section 182(a)(1), because the revised periodic inventory must meet the same requirements as the initial emissions inventory. We therefore believe it is a reasonable interpretation of the CAA that RFP baseline year emissions may correspond with the calendar year and contents of the triennial inventory required by CAA section 182(a)(3). We are finalizing our approach that states shall use an RFP baseline year for the 2015 ozone NAAQS that corresponds with the calendar year for the most recent triennial emissions inventory preceding the year of the area's effective date of nonattainment designation. For example, states with areas designated nonattainment in 2018 would use 2017 as the RFP baseline year, which would be the year of the most recent triennial emissions inventory.

For purposes of the 2015 ozone NAAQS, states may also use an alternative RFP baseline year that corresponds with the year of the effective date of an area's designation. This adopted approach for the 2015 ozone NAAQS revises the approach provided in the 2008 Ozone NAAQS

[14] CAA section 182(b)(1)(B) defines "baseline emissions" as the total amount of actual VOC or NO_X emissions from anthropogenic sources in the area during calendar year 1990, which we have interpreted as corresponding with the emissions inventory for the area as of November 15, 1990; the development of an emissions inventory with that reference date was required under CAA section 182(a)(1).

SIP Requirements Rule, which allowed the state to select an alternative RFP baseline year between the year of the revised NAAQS issuance (*i.e.*, 2008) and the year in which nonattainment designations were effective (*i.e.*, 2012), so long as the state could explain why the alternative year was appropriate. The EPA's creation of the state-selected alternative RFP baseline year option for the 2008 Ozone NAAQS SIP Requirements Rule was rejected by the court in *South Coast II*, because the court found that the EPA failed to provide a statutory justification for why alternative baselines were appropriate. *South Coast II*, 882 F.3d at 1153. As noted previously, the EPA sought comment on an alternative approach that would have *required* states to use the year of the effective date of an area's designation (designation year) as the baseline year for the RFP emissions inventory instead of the triennial emissions inventory year.

As explained earlier, for purposes of the 2015 ozone NAAQS, we are specifying that the baseline year shall be the calendar year for the most recently available triennial emissions inventory preceding the year of the area's effective date of designation as a nonattainment area, but also allowing an alternative approach that provides states the option to use an area's designation year as the baseline year for RFP. This alternative option is grounded in our interpretation of the RFP requirement in CAA section 182(b)(1)(B), which defines "baseline emissions" in terms of total VOC and NO_X emissions in the area "during the calendar year 1990." There is clear ambiguity in the statutory language at issue, since we do not believe Congress intended 1990 to be the baseline year for RFP requirements for all future ozone NAAQS. Therefore, the EPA must develop a reasonable interpretation of the baseline year provisions at issue. Note that section 93.119(e)(4) of the EPA's transportation conformity rule requires that for any NAAQS promulgated after 1997 the baseline year is the "most recent year for which the EPA's Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart

A) requires submission of on-road mobile source emissions inventories as of the effective date of designations." For nonattainment areas for the 2015 ozone NAAQS, 2017 is the baseline year for transportation conformity purposes.

The calendar year 1990 is tied to the November 15, 1990, date of passage of the 1990 CAA Amendments, which "is the date on which Congress specified that the initial designations/classifications . . . under the 1990 amendments would take effect." *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014) (citing 42 U.S.C. 7407(d)(1)(C), 7511(a)(1)). Thus, for the 1-hour standard, the RFP baseline year was "calendar year 1990," which was *both* the year of the initial emissions inventory required by CAA section 182(a)(1) *and* the year of designations. However, for future promulgations and revisions of NAAQS, the year of designations and the year of the most recent triennial emissions inventory may not coincide—and for the 2015 ozone NAAQS, they do not. Where they do not coincide, no single year can be selected that presents both the attributes that 1990 did in the context of the Amendments and the subsequent implementation process. Accordingly, we believe that in the context of implementing a NAAQS for which these 2 years do not coincide, the textual reference in the RFP requirement's "baseline emissions" provision reference to the "calendar year 1990" (CAA section 182(a)(1)) can be reasonably read to refer to that year either as an area's year of initial designation or as the year of the relevant emissions inventory. We therefore believe it is a reasonable interpretation of the statute that states should be able to use an area's designation year for the 2015 ozone NAAQS as the RFP baseline year, as an alternative to the calendar year for the most recent triennial emissions inventory. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year.

3. Comments and Responses

Comment: The EPA received broad support for our proposal to retain the existing flexible approach to establishing an RFP baseline year. Commenters noted that an RFP baseline year fixed to an area's designation may not synchronize with the most recently available triennial emissions inventory at the time ROP/RFP plans are developed, may not be representative of ozone-producing conditions for the area, and/or would not account for early actions to reduce ozone precursor emissions. A fixed RFP baseline year could necessitate preparing separate emissions inventories, *e.g.*, for attainment demonstration modeling and RFP, at additional time and cost for air agencies with limited resources.

Response: As discussed previously, the EPA's creation of the state-selected alternative RFP baseline year option for the 2008 Ozone NAAQS SIP Requirements Rule was rejected by the court in *South Coast II*, because the court found that the EPA failed to provide a statutory justification for why alternative baselines were appropriate. We agree with the commenter that under certain circumstances a single fixed RFP baseline year could increase resource burden for air agencies. Thus, we are adopting an approach for the 2015 ozone NAAQS that syncs the RFP baseline with triennial emissions inventory reporting years, but permits states to alternatively choose the year of designation.

Comment: One commenter argued that the EPA's existing RFP baseline year approach is illegal because the Act plainly specifies the RFP baseline year in CAA section 182(b)(1)(B) (*i.e.*, calendar year 1990), and that RFP requirements would therefore be triggered—and the RFP baseline year would be set—by the date an area is designated for the revised NAAQS. The commenter claimed that where Congress wanted to authorize variation in implementing the ozone NAAQS, it did so expressly (*e.g.*, allowing the Administrator to adjust SIP deadlines for reclassified areas under CAA section 182(i)).

Response: As discussed previously, the court in *South Coast II* upheld the EPA's selection of 2011, *i.e.*, the most recent year from the 3-year statutory cycle for emissions inventories, as the default RFP baseline year for the 2008 ozone NAAQS as reasonable. We are adopting this same approach for the 2015 ozone NAAQS, while also allowing states to choose an alternative RFP baseline year corresponding with an area's designation year. For the reasons cited previously, we believe both options are reasonable interpretations of the CAA's RFP provisions in adapting those provisions to revised ozone NAAQS.

Comment: A commenter objected to the EPA's proposed interpretation of CAA section 182(b)(1) that would consider areas with an approved 15 percent ROP plan under a prior ozone NAAQS to have satisfied the 15 percent ROP requirement for the 2015 ozone NAAQS. The EPA applied this interpretation previously for purposes of the 1997 and 2008 8-hour ozone standards. The commenter claimed that the proposed 15 percent ROP requirement illegally allows "paper-only" reductions to substitute for the actual emission reductions intended by Congress and articulated in the general rule for creditability of ROP reductions in CAA section 182(b)(1)(C) (*i.e.*, the required reductions are creditable "to the extent they have actually occurred").

Another commenter objected to the 15 percent ROP requirement in general, describing it as outdated, not necessitated under the current ozone standards, and increasingly difficult to achieve given the decreases in ozone precursor emissions that have occurred since the CAA was amended in 1990. If the EPA continues to implement the 15 percent ROP requirement, the commenter argues that required emission reductions should be measured against the 1990 baseline in all cases, and that states should have discretion to apply NO_X or VOC reductions toward the initial 15 percent (VOC) ROP increment.

Response: The EPA disagrees that a state must demonstrate that an area actually achieved the 15 percent ROP within 6 years of the baseline year for a prior NAAQS. Consistent with the decision in *NRDC v. EPA,* 571 F.3d 1235 (D.C. Cir. 2009), we continue to maintain that if a state has already met the requirement to submit for approval and to implement a nonattainment area ROP/RFP emissions reduction plan to meet the requirements of CAA section 182(b)(1)(A) for either the 1-hour standard or a prior 8-hour standard, the state will not have to meet it again for the 2015 ozone NAAQS. As noted previously, the court in *South Coast II* affirmed this approach for purposes of the 2008 Ozone NAAQS SIP Requirements Rule.

We also disagree with the comment that the 15 percent ROP is not necessary under current ozone standards and that, if required by the EPA, it should be measured against the 1990 baseline in all cases. The RFP regulation must comply with the CAA, and section 182(b)(1) of the CAA explicitly requires that ozone nonattainment areas classified as Moderate or higher submit an ROP plan to achieve a 15 percent reduction in VOC baseline emissions over a 6-year period following the baseline year. We continue to believe it is reasonable to interpret that baseline year as the one associated with the revised ozone NAAQS and not the year 1990 associated with the then-current 1-hour NAAQS. A 1990 baseline year for areas designated in 2018 would be impractical and an absurd result, especially for areas that were not nonattainment for the ozone NAAQS in 1990 and thus never subject to a past requirement to develop and use a 1990 nonattainment area emissions inventory for purposes of RFP. Assessing 15 percent ROP only during the period 1990-1996 would be meaningless for a nonattainment area that must in 2018 begin achieving emissions reductions to meet an ozone NAAQS with an attainment date in a year after 2018.

Comment: A number of commenters disagreed with the EPA's proposed requirement that creditable emission reductions for 15 percent ROP and 3 percent RFP must be obtained from sources within the nonattainment area. Several of the commenters referenced our proposed requirement regarding control measures for out-of-area sources in a state's jurisdiction (*see* Section IV.C of this preamble), and questioned whether it was reasonable that the EPA could require out-of-area emission reductions for attainment purposes, while not crediting those reductions toward RFP.

Response: The EPA disagrees with the commenters. The proposed requirement that emission reductions must be obtained from within the nonattainment area to be creditable for ROP and RFP is the same as that adopted in the 2008 Ozone NAAQS SIP Requirements Rule, which was challenged and upheld in *South Coast II*. The court in *South Coast II* declared that the related statutory text is unambiguous, noting that RFP is measured from "baseline emissions," which is defined in the CAA as "the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the" baseline year.[15] The court noted the singular term "the area" appears in a CAA section titled "Moderate Areas," and not a greater area (CAA section 182(b); *see also* CAA section 182(c)). The court concluded, in considering the grammar and context of the CAA's RFP provisions, that "in the area" unambiguously refers to baseline emissions within the nonattainment area. *South Coast II*, 882 F.3d at 1146-47. Accordingly, the EPA concludes, as we did in the 2008 Ozone NAAQS SIP Requirements Rule, that we have no legal basis for allowing RFP credits for reductions outside the nonattainment area.

F. Requirements for RACT and RACM

1. RACT

[15] *See* CAA sections 182(b)(1)(A), (b)(1)(B), (c)(2)(B), (d) and (e).

a. Summary of Proposal. The EPA proposed to retain our existing general RACT requirements, which are codified for the 2008 ozone NAAQS at 40 CFR 51.1112, and to add new deadline requirements for certain RACT SIP submissions (*see* Section IV.B of this preamble). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for how air agencies can provide for RACT in their nonattainment SIPs (80 FR 12278; March 6, 2015).

b. Final Rule. The EPA is retaining our existing general RACT requirements for purposes of the 2015 ozone NAAQS. These requirements, which are being codified at 40 CFR 51.1312(a) and (b), address the content and timing of RACT SIP submittals and implementation, as well as major source criteria for RACT applicability.[16] Underlying these general RACT requirements are well-established EPA policies and guidance, including existing control techniques guidelines (CTGs) and alternative control techniques (ACTs).[17] Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs. The EPA's adopted RACT approach

[16] The EPA has defined RACT as the most stringent emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. *See* related discussion in "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas," Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators (December 9, 1976) (Strelow Memorandum) and the proposed General Preamble Supplement in 44 FR 53762 (September 17, 1979). Availability and feasibility may differ across sources in the same category. *See* "Criteria for Determining RACT in Region IV," Memorandum from John Calcagni, Chief, Economic Analysis Branch, to G. T. Helms, Jr., Chief, Control Programs Operations Branch (June 19, 1985).

[17] The EPA's CTGs and ACTs are available at: *https://www.epa.gov/ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques-documents-reducing*.

includes our longstanding policy with respect to "area wide average emission rates." This policy recognizes that states may demonstrate as part of their NO_X RACT SIP submission that the weighted average NO_X emission rate of all sources in the nonattainment area subject to RACT meets NO_X RACT requirements; states are not required to demonstrate RACT-level controls on a source-by-source basis. This approach for demonstrating RACT through area-wide average emissions rates was recently upheld in *South Coast II*, 882 F.3d at 1154. The EPA is also finalizing new submittal and implementation deadlines for certain RACT SIP revisions, as discussed in Section IV.B of this preamble.

c. Comments and Responses. Comment: Two commenters stated that the EPA should extend the submittal deadline for RACT SIPs from 24 months to 36 months following the effective date of a nonattainment area's designation.

Response: The EPA has considered the comments regarding an extended submittal deadline for RACT SIP revisions, but, given the uncertainty regarding the statutory basis for providing such flexibility, does not interpret CAA section 182(b)(2) to allow extending the deadline for RACT SIP submissions triggered by initial nonattainment area designations. We are instead adopting an interpretation consistent with the requirement in the 2008 Ozone NAAQS SIP Requirements Rule that RACT SIP submissions triggered by initial nonattainment area designations must be submitted based on the timeframe provided in CAA section 182(b)(2), *i.e.*, no later than 24 months after the effective date of nonattainment designation for a specific ozone NAAQS. As discussed in Section IV.B of this preamble, the EPA is adopting an alternative approach for RACT SIP revisions triggered by nonattainment area reclassifications or the issuance of a new CTG.

Comment: Several commenters objected to the EPA proposing to retain our "area wide average emission rates" approach for RACT. They contend that the emissions averaging policy violates the clear terms of the CAA, which they argue requires each individual source to meet the NO_X RACT requirement. One commenter provided a legal analysis of statutory language and legislative history as confirming the source-specific basis of RACT requirements. The same commenter also pointed to the EPA's previous RACT guidance[18] and the NO_X RACT exemption provisions of CAA section 182(f)(1) and (2) as further evidence of RACT's source-specific basis.

Response: The EPA disagrees with the commenters. As mentioned previously, the D.C. Circuit recently upheld the RACT emissions averaging policy with respect to the 2008 ozone NAAQS, and we are retaining it for purposes of the 2015 ozone NAAQS. The court held that "the plain language [of the CAA] – in the context of the interrelationship between [42 U.S.C. sections] 7511a(b)(2) and 7502(c)(1) – does not mandate RACT for each individual source." *South Coast II*, 882 F.3d at 1154. In addition to holding that the CAA does not require the approach advanced by the commenters, the court further held that the EPA's area-wide emissions averaging approach for the 2008 ozone NAAQS, which is adopted again here for the 2015 ozone standards, is reasonable. *Id.* ("The EPA's interpretation reasonably allows nonattainment areas to meet RACT-level emissions requirements through averaging within a nonattainment area.").

2. RACM

a. Summary of Proposal. The EPA proposed to retain our existing RACM requirements, which are codified for the 2008 ozone NAAQS at 40 CFR 51.1112. The EPA also proposed to codify the existing requirement under CAA section 172(c)(6) that, in addition to impacts of

[18] *See* Strelow Memorandum.

emissions from sources inside an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area but within a state's boundaries, and to require such other measures for emissions reductions from these intrastate sources as needed to attain the ozone NAAQS by the applicable attainment date (*see* Section IV.C of this preamble). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule describes the EPA's current rationale and approach for how air agencies can provide for RACM in their nonattainment SIPs (80 FR 12282; March 6, 2015).

b. Final Rule. The EPA is retaining our existing general RACM requirements for purposes of the 2015 ozone NAAQS, as codified at 40 CFR 51.1312(c). The EPA interprets the RACM provision to require a demonstration that an air agency has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and, thus, that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.[19,20,21] Further, the EPA requires that air agencies consider all available measures, including those being implemented in other areas, but must adopt measures for an area only if those measures are economically and

[19] "State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas" 44 FR 20375 (April 4, 1979). "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule." 57 FR 13560 (April 16, 1992).

[20] "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," Memorandum from John S. Seitz, Director, OAQPS. November 30, 1999. Available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19991130_seitz_racm_guide_ozone.pdf*.

[21] "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs," Memorandum from John S. Seitz, Director, OAQPS, December 14, 2000, available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20001214_seitz_additional_racm_submissions.pdf*.

technologically feasible and will advance the attainment date, or if those measures are necessary for RFP. The EPA is retaining our existing general RACM requirements for the 2015 ozone NAAQS based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule, and the requirements of CAA section 172(c)(6).

c. Comments and Responses. The EPA received no adverse comments on our proposal to retain our existing general RACM requirements for purposes of the 2015 ozone NAAQS. Our responses to comments regarding consideration of other measures for emissions reductions from intrastate sources under CAA section 172(c)(6) are provided in Section IV.C of this preamble.

G. CAA Section 182(f) NO_X Exemption Provisions

1. Summary of Proposal

The EPA proposed to retain our existing NO_X exemption provisions under CAA section 182(f), which are codified for the 2008 ozone NAAQS at 40 CFR 51.1113. These provisions would allow a person or an air agency to petition the Administrator for an exemption from NO_X obligations for the 2015 ozone NAAQS under CAA section 182(f) for any area designated nonattainment and for any area in an OTR. The EPA proposed that NO_X exemptions granted for a previous ozone NAAQS would not apply to relieve an area from CAA section 182(f) NO_X obligations under the 2015 standards.

2. Final Rule

The EPA is finalizing our proposal to retain the existing NO_X exemption provisions under CAA section 182(f) for purposes of the 2015 ozone NAAQS, as codified at 40 CFR 51.1313. NO_X exemptions granted for any prior ozone NAAQS do not relieve an area from CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS. Consistent with current EPA

policy, existing NO_X exemptions for prior ozone standards remain valid for purposes of determining applicable requirements for implementing those prior standards.[22]

3. Comments and Responses

The EPA received no significant adverse comments regarding our proposal to retain our existing NO_X exemption provisions under CAA section 182(f) for purposes of the 2015 ozone NAAQS.

H. General Nonattainment NSR Requirements

1. Summary of the Proposed Rule

With one significant exception, the EPA proposed to retain our NNSR requirements contained at 40 CFR 51.165 and part 51 Appendix S, which include provisions for the preconstruction review and issuance of permits to proposed new major stationary sources and major modifications locating in ozone nonattainment areas. The one exception pertained to a proposal to address interprecursor trading (IPT) for meeting the offset requirement for ozone, which is discussed further in Section IV.D of this preamble.

2. Final Rule

The EPA is adopting general NNSR requirements for the 2015 ozone NAAQS at 40 CFR 51.1314, as proposed. As explained in Section IV.D of this preamble, the EPA is restating our existing policy on ozone IPT, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5, in response to a petition for reconsideration. A basic understanding of how the NNSR requirements would otherwise apply to the 2015 ozone NAAQS can be

[22] "Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation," Memorandum from Stephen D. Page, Director, OAQPS, to Air Directors, Regions I-X (January 14, 2005), available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20050114_page_guidance_8-hr_ozone_nox_exemptions.pdf*.

obtained from the preamble discussion at Section VIII.C in the final rule establishing the 2015 ozone NAAQS. *See* 80 FR 65442 (October 26, 2015).

3. Comments and Responses

The EPA received no significant adverse comments regarding our proposed general NNSR requirements. Please see Section IV.D of this preamble for comments related to the EPA restating our existing policy on ozone IPT.

I. Ambient Monitoring Requirements

The EPA did not propose any changes to the existing ozone ambient monitoring requirements that are codified in 40 CFR part 58. Monitoring rule amendments published on October 17, 2006 (71 FR 61236), established minimum ozone monitoring requirements based on population and levels of ozone in an area to better prioritize monitoring resources. The minimum monitoring requirements are contained in Table D–2 of appendix D to part 58. The Photochemical Assessment Monitoring Station (PAMS) program collects ambient air measurements in accordance with the enhanced monitoring requirements of CAA section 182(c)(1). The rulemaking for the final 2015 ozone NAAQS included revisions to the PAMS requirements at 40 CFR part 58 (80 FR 65416; October 26, 2015). The revisions were intended to provide a more spatially dispersed monitoring network, reduce potential redundancy and improve data value while providing monitoring agencies flexibility in collecting additional information needed to understand their specific ozone issues. The EPA received no adverse comments on the existing part 58 ozone ambient monitoring requirements, and makes no changes to these existing requirements in this final rule.

J. Requirements for an OTR

1. Summary of Proposal

The EPA proposed to retain our existing OTR requirements, and to add new deadline requirements for certain RACT SIP revisions (*see* Section IV.B of this preamble). The OTR requirements for the 2008 ozone NAAQS, which are codified in 40 CFR 51.1116, establish the general applicability of CAA sections 176A (interstate transport commissions) and 184 (control of interstate ozone air pollution), and stipulate the criteria and timing for RACT SIP submittals and RACT implementation for those portions of states located in an OTR (*see* 80 FR 12295; March 6, 2015). With the exception of additional submission and implementation deadlines for certain RACT SIP revisions (*see* Section IV.B of this preamble), the EPA proposed to retain the same requirements for the 2015 ozone NAAQS, without revision.

2. Final Rule

The EPA is finalizing the proposed OTR requirements. The adopted requirements for purposes of the 2015 ozone NAAQS are codified at 40 CFR 51.1316.

3. Comments and Responses

The EPA received no adverse comments specific to the proposed OTR requirements.

K. Fee Programs for Severe and Extreme Nonattainment Areas that Fail to Attain

1. Summary of Proposal

For the 2015 ozone NAAQS the EPA proposed to retain without revision our existing fee program SIP submission requirements for ozone nonattainment areas classified Severe or Extreme, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1117.

2. Final Rule

The EPA is finalizing the proposed requirements. The adopted fee program provisions, codified for the 2015 ozone NAAQS at 40 CFR 51.1317, require states with ozone nonattainment areas classified Severe or Extreme to submit a SIP revision that meets the

requirements of CAA section 185 (Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain) within 10 years of the effective date of an area's nonattainment designation. For nonattainment areas reclassified to Severe or Extreme from a lower classification after the date of their initial nonattainment designation, the EPA retains the ability to set an alternative deadline for the section 185 SIP submission, if appropriate, in the final action reclassifying the area. We anticipate that adjusting the section 185 SIP submission deadline could be appropriate in situations where the reclassification action occurs on a date that is unreasonably near to or past the 10-year deadline applicable to areas initially designed Severe or Extreme.

3. Comments and Responses

The EPA received no adverse comments on the proposed requirements.

L. Applicability

The EPA proposed to retain the provision that establishes applicability of the current ozone NAAQS implementation provisions with respect to the prior ozone NAAQS, which is codified for the 2008 ozone NAAQS at 40 CFR 51.1119. This applicability provision states that the implementation provisions for the 2008 ozone standards (subpart AA of part 51) shall replace the implementation provisions for the previous 1997 standards (subpart X of part 51) after revocation of the 1997 NAAQS, except for anti-backsliding purposes. The EPA proposed to retain the same applicability provision for purposes of the 2015 ozone NAAQS, except that the proposed new implementation provisions (to be codified in subpart CC of part 51) would replace those for the 2008 ozone NAAQS (subpart AA) if the 2008 standards are revoked for all purposes, except for anti-backsliding purposes.

As discussed in Section II of this preamble, the EPA is not taking any final action regarding our approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the agency intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking. As a result, we are not finalizing the proposed applicability provision discussed in this section at this time, which would be dependent on the particular approach that we take to any revocation action for 2008 ozone NAAQS that we may issue in the future.

M. International Transport

Domestic ozone air quality can be influenced by emissions sources located outside of the U.S. These contributions to U.S. ozone concentrations from sources outside of the U.S., which can be from nearby sources in a bordering country or from sources many thousands of miles away,[23] can affect to varying degrees the ability of some areas to attain and maintain the 2015 ozone NAAQS. The EPA continues to work with air agencies and other countries to better understand the extent and implications of transboundary flows of air pollutants and, where possible, to mitigate their impact on U.S. domestic air quality.

In most areas in the U.S. with monitors that exceed the NAAQS, modeling studies demonstrate that the exceedances are due primarily to anthropogenic emissions sources within the U.S. However, Congress recognized the possibility that in some nonattainment areas the ability to attain the NAAQS may be impacted by emissions sources outside of the U.S., and

[23] Observational and modeling studies have shown that international ozone precursor emissions can lead to ozone formation within the atmospheric boundary layer over far-upwind areas. When meteorological conditions are favorable, this ozone can be transported within the mid- and upper troposphere where ozone lifetimes can exceed one week. Eventually, these ozone plumes can mix down to the surface and contribute to local ozone concentrations within the U.S. Task Force on Hemispheric Transport of Air Pollution, 2010.

through CAA section 179B ("International Border Areas"), Congress provided the EPA with the authority to address the impact of international emissions in areas designated nonattainment. Specifically, Congress provided that the EPA could approve attainment plans for areas that could attain the relevant NAAQS by the statutory attainment date "but for" emissions emanating from outside the U.S. When applicable, this CAA provision relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those required to address reasonably controllable emissions from within the U.S. Specifically, CAA section 179B(a) provides that the EPA shall approve an attainment plan for such an area if: (i) the attainment plan meets all other applicable requirements of the CAA, and (ii) the submitting state can satisfactorily demonstrate that, "but for emissions emanating from outside the United States," the area would attain and maintain the relevant NAAQS. In addition, CAA section 179B(b) applies specifically to the ozone NAAQS and provides that if a state demonstrates that an ozone nonattainment area would have timely attained the NAAQS by the applicable attainment date "but for emissions emanating from outside of the United States," then the area need not apply for an extension of the ozone attainment dates pursuant to CAA section 181(a)(5), and is not subject to the stationary source fee program provisions of CAA section 185 and the mandatory reclassification provisions under CAA section 181(b)(2)[24] for areas that fail to attain the ozone NAAQS by the applicable attainment date. Section 179B, thus, can be an important tool that provides states relief from the requirement to demonstrate attainment—and from the more stringent planning requirements that would result from failure to attain—in areas where, even

[24] The EPA's longstanding view is that CAA section 179B(b) contains an erroneous reference to section 181(a)(2), and that Congress actually intended to refer here to section 181(b)(2). *See* "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, 13569 n. 41 (April 16, 1992).

though the air agency has taken appropriate measures to address air quality in the affected area, emissions from outside of the U.S. prevent attainment.

1. Summary of Proposal

The EPA proposed a requirement that all demonstrations under CAA section 179B(b), regardless of an area's classification (including nonattainment areas classified as Marginal), must include a showing that the air agency has adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1). We also asked for comment on whether the opportunity for air agencies to submit demonstrations under CAA section 179B should be limited to nonattainment areas adjoining international borders, and on any technical and legal basis for determining whether it is appropriate to have, or conversely whether it is appropriate not to have, such a geographic limitation. The proposal noted that the science review supporting the 2015 ozone NAAQS suggested that the influence of international sources on U.S. ozone levels will be largest in locations near the borders of Mexico or Canada (80 FR 65292, 65444; October 26, 2015) and that, historically, only states with nonattainment areas in the immediate vicinity of the Mexican border have submitted CAA section 179B demonstrations to the EPA (81 FR 81303; November 17, 2016).

2. Final Rule

The EPA is not finalizing our proposed requirement that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT.

The EPA is choosing to not adopt our proposal for this final rule because the Act does not require states to implement RACM/RACT in Marginal ozone nonattainment areas. For purposes of CAA section 179B demonstrations for the 2015 ozone NAAQS, we are maintaining the

approach used for prior ozone standards that only areas classified Moderate and higher must show that they have implemented RACM/RACT.

In the proposal, the EPA also solicited comment on whether—but did not propose that—demonstrations under CAA section 179B should be limited only to nonattainment areas adjoining international borders. After considering comments received, we are not adopting any geographic limitation on the use of CAA section 179B for purposes of the 2015 ozone NAAQS. We are instead clarifying that a demonstration prepared under CAA section 179B could consider emissions emanating from North American or intercontinental sources and is not restricted to areas adjoining international borders, consistent with the approach articulated in the preamble of the 2008 Ozone NAAQS SIP Requirements Rule.

The EPA encourages air agencies to coordinate with their EPA Regional office to identify approaches to evaluate the potential impacts of international transport and to determine the most appropriate information and analytical methods for each area's unique situation. The EPA will also work with air agencies that are developing attainment plans for which CAA section 179B is relevant, and ensure the air agencies have the benefit of the EPA's understanding of international transport of ozone and ozone precursors. Air agencies are encouraged to consult with their EPA Regional office to establish appropriate technical requirements for these analyses. In addition, the EPA is currently developing supplementary technical information and guidance to assist air agencies in preparing demonstrations that meet the requirements of CAA section 179B.

3. Comments and Responses

Comment: The EPA received numerous comments on our proposed RACM/RACT requirement for all demonstrations under CAA section 179B(b) (including for Marginal areas),

and providing feedback on whether CAA section 179B applicability should be limited to nonattainment areas adjoining international borders. There was broad objection to both approaches, which many commenters interpreted as restricting the potential use of CAA section 179B for attainment plans under the 2015 ozone NAAQS.

Response: As discussed previously, the EPA is not interpreting CAA section 179B as requiring that demonstrations under CAA section 179B(b) for Marginal areas include a showing that the air agency adopted all RACM, including RACT. We are also finalizing our existing approach that does not restrict the use of CAA section 179B demonstrations to areas adjoining international borders.

Comment: Several commenters supported the proposed RACM/RACT requirement for all demonstrations under CAA section 179B(b). One commenter stated that CAA section 179B does not alter the subpart 1 requirement in CAA section 172(c)(1) that all SIPs provide for implementation of RACM/RACT as expeditiously as practicable. The same commenter also argued that failure to require RACM/RACT for Marginal areas seeking relief under CAA section 179B would upset the subpart 2 scheme for reclassification and implementation of basic reasonable control measures, and prevent attainment of the NAAQS as expeditiously as practicable.

Response: The EPA is not finalizing our proposed requirement that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT. The Act does not require implementation of RACM/RACT in Marginal ozone nonattainment areas under the relevant implementation provisions in subpart 2, and nothing in 179B alters the statutory requirements with respect to RACM/RACT obligations in subpart 2. The EPA believes the CAA's specific provisions for ozone Marginal areas in section 182(a)

rather than general nonattainment provisions in section 172(c)(1) prescribe the specific SIP revision requirements for such areas. In section 182(a), the CAA states "Each state [with a Marginal area] shall…submit to the Administrator the state implementation plan revisions *(including the plan items) described under this subsection*…" (emphasis added). Subsection 182(a) does not list RACM/RACT as a plan item. This is in clear contrast to the provisions in subsection 182(b) for Moderate and higher classified areas, which identifies specific RACT requirements (e.g., section 182(b)(2)) and plan submissions that "provide such specific annual reductions in emissions…as necessary to attain…" For this final rule, we are adopting our existing approach grounded in the plain language of CAA section 179B(b), which applies specifically to the ozone NAAQS and does not explicitly modify the subpart 2 planning requirements in CAA section 182 to require RACM/RACT for Marginal areas.

IV. Provisions of the 2008 Ozone NAAQS Implementing Regulations to be Retained with Specific Revisions

For purposes of implementing the 2015 ozone NAAQS, we are promulgating several regulatory provisions that are similar to the corresponding implementation provisions for the 2008 ozone NAAQS, but with modifications to reflect application to the 2015 ozone NAAQS, as explained later. The existing implementation provisions for the 2008 standards are codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards will now be codified at subpart CC of part 51. The revised provisions for the 2015 standards address SIP requirements pertaining to MCD for RFP; the submission and implementation deadlines for RACT SIP revisions; the consideration of intrastate pollution sources outside of a nonattainment area for attainment planning purposes; NNSR IPT for ozone; and emissions inventories and emissions statements.

A. Requirements for RFP: Milestone Compliance Demonstrations

The EPA proposed to revise our RFP provisions for purposes of the 2015 ozone NAAQS to address MCDs required under CAA section 182(g) for ozone nonattainment areas classified Serious or higher. The RFP regulatory provisions for the 2008 ozone NAAQS characterize the emissions reductions and time intervals that constitute RFP milestones, but do not address the requirements for demonstrating compliance with these milestones.

CAA section 182(g)(1) requires that states demonstrate whether nonattainment areas classified Serious, Severe or Extreme have achieved incremental RFP emission reductions needed to ensure attainment of the NAAQS by the prescribed applicable time intervals (*i.e.*, milestones). The statute establishes an initial milestone date of 6 years after November 15, 1990, and at intervals of 3 years thereafter. These milestones are established in the general RFP requirements of CAA sections 182(c)(2)(B) for Serious areas. Sections 182(d) and 182(e) incorporate those requirements for, respectively Severe and Extreme areas. Accordingly, the timeline for Serious areas provided in section 182(c)(2)(B) also applies to Severe and Extreme areas.

CAA section 182(g)(2) requires that states submit to the Administrator a demonstration that an RFP milestone has been met, not later than 90 days after the applicable milestone date. Section 182(g) refers to the required emissions reduction for the time interval as the "applicable milestone." Section 182(g)(2) of the CAA states that the form, manner of submittal and contents of the required compliance demonstration shall be set by the Administrator by rule.

CAA sections 182(g)(3) and (g)(5) establish measures a state "shall elect" to implement if the state fails to submit a MCD by the due date or the EPA determines that a milestone was not met. For Serious and Severe areas, an air agency shall elect within 90 days of the failure or

determination to: (1) have the area reclassified to the next higher classification; (2) implement additional measures to meet the next milestone per the applicable contingency plan; or (3) adopt an economic incentive program as described in CAA section 182(g)(4). For an Extreme area, an air agency shall within 9 months of the failure or determination submit a SIP revision to implement a CAA section 182(g)(4) economic incentive program.

1. Summary of proposal

The EPA proposed that an air agency will have the option to demonstrate milestone compliance in terms of either: (1) compliance with control measures requirements in an RFP plan that complies with the requirements of the CAA (*e.g.*, percent implementation), or (2) actual emissions reductions, as demonstrated with periodic emissions inventory data required under CAA section 182(a)(3)(A). In considering the form and content of an ozone MCD submittal, the EPA referenced the parallel regulatory requirements for fine particulate matter ($PM_{2.5}$), which were added in the 2016 final implementing regulations for the $PM_{2.5}$ NAAQS.[25] The EPA also considered the amount of time allowed in the statute for states to make the required submittal.

2. Final rule

The EPA is finalizing MCD requirements for RFP as proposed. These requirements, codified at 40 CFR 51.1310(c), are consistent with the $PM_{2.5}$ SIP Requirements Rule.[26] Similar to the statutory requirements for ozone, CAA section 189(c)(1) establishes a 3-year cycle for

[25] *See* "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements" 81 CFR 58063-64; August 24, 2016), hereafter $PM_{2.5}$ SIP Requirements Rule.
[26] *See id*.

$PM_{2.5}$ milestones. For both pollutants, the CAA provides Administrator discretion in setting the form and content of the milestone demonstration submittal.[27]

The $PM_{2.5}$ SIP Requirements Rule requires that the quantitative milestones be constructed such that they can be tracked, quantified and/or measured adequately in order for an air agency to meet its milestone reporting obligations, which come due 90 days after a given milestone date. For $PM_{2.5}$, the EPA interprets CAA section 189(c) to allow air agencies to identify milestones that are suitable for the specific facts and circumstances of the attainment plan for a particular area, so long as they provide an objective means to measure RFP.[28]

The EPA is adopting a similar approach for MCDs for the 2015 ozone NAAQS. We interpret CAA sections 182(g)(1) and 182(g)(2) as imposing two separate obligations on an air agency: 1) to determine whether an affected nonattainment area has achieved an incremental emissions reduction corresponding with the RFP milestone; and 2) to demonstrate to the satisfaction of the Administrator that the RFP milestone has been met. We believe it would be sufficient for purposes of CAA section 182(g)(2) for an air agency to demonstrate milestone compliance in terms of compliance with control measures requirements in the approved RFP

[27] CAA sections 182(g)(2) and 189(c)(2) share the same basic milestone demonstration submittal requirements, *i.e.*, not later than 90 days after the applicable milestone date, each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. For $PM_{2.5}$, the statute further qualifies that the submittal must also demonstrate that all measures in the SIP have been implemented.

[28] In the Addendum to the General Preamble, the EPA suggested (for implementation of the PM_{10} NAAQS) possible metrics that "support and demonstrate how the overall quantitative milestones identified for an area may be met," such as percent implementation of control strategies, percent compliance with implemented control measures and adherence to a compliance schedule. This list was not exclusive or exhaustive but reflected the EPA's view that the purpose of the quantitative milestone requirement is to provide an objective way to determine whether the area is making the necessary progress towards attainment by the applicable attainment date (59 FR 41998 at 42016; August 16, 1994).

plan (*e.g.*, percent implementation), because the approach is grounded in SIP provisions that correlate control measures and resulting emissions reductions. As an alternative, an air agency could rely on periodic, triennial emissions inventory data for demonstration purposes where the appropriate data are obtainable within the 90-day MCD submittal timeframe.[29] In all cases, the EPA would review each RFP plan submission on a case-by-case basis to determine whether the milestones contained in the plan are specific enough to provide an objective means for evaluating the area's progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

We are providing additional guidance on the MCD submission process in this final rule. Consistent with the EPA's process for $PM_{2.5}$ quantitative milestones, the EPA believes it would be appropriate for MCD to be submitted from the Governor or Governor's designee to the Regional Administrator of the respective EPA Regional office serving the submitting state. The EPA will notify the state of our determination (regarding whether or not the state's demonstration is adequate) by sending a letter to the appropriate Governor or Governor's designee or, alternatively, by publishing a notice in the **Federal Register**. The EPA encourages states to submit MCDs, including supporting documents, through the agency's electronic SIP submission system[30] in order to simplify the process and reduce resource burden on all sides. The

[29] Triennial emissions reporting periods are set by regulation in the AERR at 40 CFR part 51, subpart A. The most recent and upcoming reporting years are 2017, 2020, 2023 and 2026, where the reports are due to the EPA by December 31 of the calendar year that follows the reporting year. As discussed in Section IV.E of this preamble, the adopted regulations for the 2015 ozone NAAQS provide that states may use the most recent triennial report period emissions inventory to satisfy the nonattainment area reporting requirements of CAA section 182(a)(3)(A). *See* 40 CFR 51.1315(b).

[30] State Planning Electronic Collaboration System (SPeCS) for SIPs. For more information *see https://www.epa.gov/air-quality-implementation-plans/submit-sips-online*.

EPA believes it is consistent with statutory requirements to not consider MCDs to be formal SIP revisions subject to CAA public notice and comment requirements.

3. Comments and Responses

Comment: One commenter argued that an "actual emissions reductions" approach using emissions inventory data is the only lawful and rational approach for demonstrating RFP milestone compliance. Because the Act defines RFP baseline emissions in terms of actual VOC or NO_X emissions (*see* CAA section 182(b)(1)(B)), the commenter contended that RFP can only be satisfied by actual emission reductions. This interpretation, they claimed, is supported by the CAA's legislative history and the EPA's General Preamble. Further, the commenter notes that RFP must address "any growth in emissions after" the baseline year (*see* CAA sections 182(b)(1)(A)(i) and 182(c)(2)(B)) and, therefore, only actual emissions would be sufficient to gauge compliance with an RFP baseline.

Response: The EPA disagrees with the commenter that actual emissions reductions are the only possible basis for demonstrating RFP milestone compliance under CAA section 182(g). For $PM_{2.5}$, the statute requires quantitative milestones that demonstrate RFP, whereas for ozone CAA section 182(g)(1) uses the term "applicable milestone" to refer to the required RFP emissions reduction. However, CAA section 182(g)(2) specifically provides the Administrator the authority and discretion to establish the "form and manner" of MCDs, and the EPA is exercising this authority and discretion through the regulations adopted in this final rule. We encourage air agencies to work with their EPA Regional office to develop a MCD suitable for the specific facts and circumstances of the attainment plan for a particular area (addressing, as appropriate, the potential emissions growth noted by the commenter), which provides an objective means to measure RFP.

Comment: Two commenters supported the EPA's proposed MCD requirements and urged the agency to issue related guidance. One of the commenters noted that the proposed MCD regulations were silent on the form and manner of submittal, and requested that the EPA clarify who is required to submit the MCD, whether the submission is considered a SIP revision, and whether public notice would be required for the MCD. The same commenter further requested that the EPA clarify whether historical emissions inventory data can be used for MCDs where the required RFP reduction was achieved in advance of the applicable milestone date.

Response: The EPA has provided additional guidance on the MCD submission process in this final rule preamble, as explained earlier, and intends to develop more detailed guidance for preparing RFP MCD for ozone and $PM_{2.5}$. Regarding the use of historical emissions inventory data in MCDs, we believe our adopted MCD requirements would accommodate this approach, so long as the MCD submission provided a sufficiently objective means for evaluating the area's progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

B. Requirements for RACT: Deadlines for Submittal and Implementation of RACT SIP Revisions

The EPA proposed new RACT SIP revision submission and implementation deadlines for specific kinds of triggering events that may occur after the EPA has initially designated areas under a revised ozone NAAQS. The RACT provisions established in the 2008 Ozone NAAQS SIP Requirements Rule address RACT SIP revision submission and implementation deadlines for areas (including portions of a state located in an OTR) subject to initial designation and existing RACT requirements, including requirements described in existing CTGs. CAA section 182(b)(2) establishes that a state shall submit a SIP revision to provide for implementation of RACT by 2 years after November 15, 1990, and provide for RACT implementation as expeditiously as practicable, but no later than May 31, 1995 (approximately 54 months from the

enactment date of the 1990 CAA Amendments). As codified for the 2008 ozone NAAQS at 40 CFR 51.1112, the EPA interpreted this CAA timeframe to require submittal of RACT SIP revisions no later than 24 months after the effective date of initial area designations, and implementation of the RACT SIP revisions no later than January 1 of the fifth year after the effective date of initial designations. Regarding mandatory reclassifications pursuant to CAA section 181(b)(2), CAA section 182(i) allows the Administrator to adjust applicable deadlines (excluding attainment dates), including those for SIP submissions and implementation. For voluntary reclassifications, CAA section 181(b)(3) does not establish a precise timeframe for submitting SIP revisions. The EPA's general practice is to establish SIP revision submission deadlines as part of the action granting an air agency's request for voluntary area reclassification.

The EPA is retaining these general RACT provisions for purposes of the 2015 ozone NAAQS, based on the rationale articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (*see* Section III.F of this preamble). However, the existing RACT provisions do not specify deadlines for some RACT SIP revision submittal and implementation requirements triggered by events occurring after initial area designations, including area reclassifications and the issuance of new CTGs. The following sections address the RACT submittal and implementation deadlines for these post-designation scenarios.

1. RACT SIP Revision Submittal and Implementation Deadlines for Newly Reclassified Areas

a. Summary of Proposal. The EPA proposed default submission and implementation deadlines for SIP revisions resulting from area reclassifications that occur after initial area designations under an ozone NAAQS.[31] This includes mandatory reclassification to a higher

[31] For purposes of this preamble discussion, "reclassification" is assumed to encompass nonattainment areas being reclassified to a higher classification, attainment areas being

classification upon failure to attain (pursuant to CAA section 181(b)(2)) and voluntary reclassification to a higher classification upon an air agency's request (pursuant to CAA section 181(b)(3)). We proposed that, following a reclassification action, RACT SIP revisions be submitted no later than 24 months after the effective date of reclassification, or by an alternative deadline established by the Administrator as part of the action reclassifying an area. We proposed that the RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We also proposed that the Administrator would retain existing authority to establish a different implementation deadline as part of the action reclassifying an area. This proposed approach would apply to nonattainment area reclassifications.

b. Final Rule. The EPA is finalizing the proposed deadlines with clarifications, as codified at 40 CFR 51.1312(a)(2) and (3). To address reclassification scenarios, we are adopting default submission and implementation deadlines for resulting SIP revisions. Following a reclassification action, RACT SIP revisions must be submitted no later than 24 months after the effective date of reclassification, or by an alternative deadline established by the Administrator as part of the action reclassifying an area. RACT SIP revisions must be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We are clarifying that the term "ozone season attainment year" used in the preamble to the proposed rulemaking should read

---

redesignated as nonattainment and assigned an initial classification of Moderate or higher, and new OTR assignments. Similarly, "RACT SIP revision" is assumed to encompass initial RACT SIPs triggered by an initial area classification of—or reclassification to—Moderate or higher.

"attainment year ozone season" as correctly presented in the proposed regulatory definition at 40 CFR 51.1300(i). The Administrator retains authority to establish different RACT SIP revision submission and implementation deadlines as part of the action reclassifying an area.

We are also in this final rule clarifying the implementation deadline for RACT SIP revisions triggered by reclassification actions that occur after initial area designations. As presented in the preamble to the proposed rulemaking, these RACT SIP revisions must be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submission deadline, whichever is earlier. The Administrator also has the authority to establish a different implementation deadline as part of the reclassification action (81 FR 81293; November 17, 2016). The proposed regulatory text in 40 CFR 51.1312(a)(3)(ii) incorrectly omitted the alternative implementation deadline—*i.e.*, it omitted the phrase "start of the attainment year ozone season associated with the area's new attainment deadline" —and we have added this language to the final rule regulatory text, consistent with the discussion in the preamble to the proposed rulemaking. These default deadlines are grounded in the construct of the overall RACT SIP revision submission and implementation timeframe articulated in section 182(b)(2) of the CAA, and are also intended to, where possible, provide at least one full ozone season in advance of an area's maximum attainment date for implemented controls to achieve emission reductions.

c. Comments and Responses. Comment: Several commenters expressed the general concern that the default timelines would not provide sufficient time for submission and/or implementation of RACT SIP revisions triggered by reclassification actions, with some commenters suggesting that air agencies should have 3 years to prepare and submit the required

SIP revision. Another commenter said that the EPA should not establish RACT deadlines more stringent than those for similarly classified areas, and that it should be a state's responsibility to determine what is "as expeditiously as practicable" as it relates to the schedule for submitting its required SIP revision.

Response: The EPA acknowledges the commenters' general concern that mandatory reclassification actions can limit the time available to submit and implement required RACT SIP revisions, but emphasizes that CAA section 182(i) does not allow the EPA to extend the maximum attainment date corresponding with an area's new classification. We have noted this statutory constraint previously in establishing the SIP revision submission deadline for nonattainment areas reclassified to Moderate after failing to attain the 2008 ozone NAAQS by the Marginal attainment date of July 20, 2015. In the face of the impending Moderate area attainment date (July 20, 2018), the EPA exercised our authority under CAA section 182(i) to set a uniform SIP submission deadline for affected areas at the latest date compatible with the RACT implementation deadline for Moderate areas (81 FR 26699; May 4, 2016).[32]

Our adopted requirements are intended to maximize planning flexibility within the fixed outer bound of an area's maximum attainment date, by retaining the Administrator's discretion under CAA section 182(i) to set alternative RACT SIP submission and implementation deadlines where appropriate. This discretion could potentially apply to the extended submission and implementation deadlines suggested by some commenters, though the degree of flexibility would be dictated by the available compliance timeframe, bounded by a reclassified area's maximum attainment date. For example, an air agency that anticipates an area will not timely attain can

[32] That latest compatible date for the 2008 ozone NAAQS was no later than January 1 of the 5th year after the effective date of designation for the NAAQS, *i.e.*, January 1, 2017.

request a voluntary reclassification under CAA section 181(b)(3), which would provide more time and potential flexibility for required RACT SIP submissions and implementation than would a later mandatory reclassification under CAA section 181(b)(2) upon actual failure to attain.

At the same time, the EPA believes it is important to provide default submission and implementation deadlines grounded in our overall approach for RACT SIP revisions outlined in CAA section 182(b), in the event that the Administrator does not exercise his or her discretion to set alternative deadlines in a reclassification action. Regarding the comment that the EPA should not establish RACT deadlines more stringent than those for similarly classified areas, we disagree and note that (particularly for mandatory reclassification actions) the Administrator cannot alter the reclassified area's maximum attainment date, which necessarily provides a shorter RACT SIP timeframe than for areas initially assigned the same classification. The EPA disagrees with the comment that it should be a state's responsibility to determine what is "as expeditiously as practicable" as it relates to the schedule for submitting their required SIP revision. The language of CAA section 182(b)(2) clearly establishes the statutory basis for RACT SIP submission deadlines, while qualifying that the SIP revisions shall provide for *implementation* of required measures as expeditiously as practicable, but not later than a date that the EPA interprets relative to the Moderate area attainment date.

Comment: A commenter remarked that the proposed default deadlines for RACT SIP revisions triggered by reclassification actions could result in implementation deadlines occurring after a reclassified area's maximum attainment date. The commenter provided an example scenario where a nonattainment area initially classified as Marginal (*e.g.*, in 2017) fails to attain by the Marginal attainment date (in 2020) and is reclassified to Moderate (in 2021), with its

RACT SIP submission due 2 years later (in 2023). The commenter goes on to illustrate how applying a default RACT implementation deadline of no later than January 1 of the third year after the associated SIP revision submission deadline would place that default implementation deadline later than the 2023 attainment date for Moderate areas. The commenter noted it was arbitrary and unlawful for the EPA to propose default deadlines that contravene statutory structure in this manner.

Response: The EPA disagrees with the commenter that our default submission and implementation deadlines for RACT SIP revisions triggered by area reclassifications contravene the CAA. The default submission deadline of no later than 24 months after the effective date of reclassification is grounded in our longstanding interpretation of the RACT SIP submission timeframe in CAA section 182(b)(2). As discussed previously, we are clarifying and adopting in this final rule our proposed default implementation deadline that requires RACT SIP revisions to be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submission deadline, whichever is earlier. The EPA agrees with the commenter that applying the latter implementation deadline (*i.e.*, January 1 of the third year after the associated SIP revision submission) would exceed the area's maximum attainment date in the commenter's Marginal-to-Moderate hypothetical mandatory reclassification scenario. We note, however, that the earlier alternative default deadline (*i.e.*, implementation by the start of the attainment year ozone season) would instead apply in this case, and would be compatible with the RACT implementation occurring before the area's attainment date passes. In the case where an air agency requests a voluntary reclassification beyond a single level (*e.g.*, Marginal to

Serious or Moderate to Severe),[33] the earlier default implementation deadline could potentially be January 1 of the third year after the associated SIP revision submission. This approach is compatible with the statutory requirement for areas initially classified Serious and higher, which must implement RACT no later than January 1 of the fifth year after the effective date of designation (*i.e.*, the attainment year for Moderate areas), and are thus afforded additional time for implemented controls to achieve emission reductions.

2. RACT SIP Revision Submittal and Implementation Deadlines Associated with New Control Techniques Guidelines

a. Summary of Proposal. The EPA proposed two approaches for establishing submission and implementation deadlines for SIP revisions triggered by new CTGs issued by the EPA after the promulgation of initial area designations under a revised ozone NAAQS. Under the first approach, we proposed a RACT SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, or the deadline established by the Administrator in the action issuing the CTG, and that RACT SIP revisions must be implemented no later than January 1 of the third year after the associated SIP revision submission deadline. Under the second approach, we also articulated the Administrator's authority to establish a deadline for implementing RACT SIP revisions as part of the action issuing a new CTG. These proposed approaches would apply to covered sources in nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations.

b. Final Rule. The EPA is finalizing a combination of the proposed approaches, as codified at 40 CFR 51.1312(a)(2) and (3). For CTGs issued between November 15, 1990, and

[33] For example, the state of California requested and was granted voluntary reclassifications beyond a single level for several nonattainment areas for the 1997 ozone NAAQS (*see* 81 FR 81285; November 17, 2016).

the date of attainment, CAA section 182(b)(2) requires a state to submit the associated RACT SIP revision, where applicable, within the timeframe established by the Administrator in issuing the CTG. The EPA interprets this provision as authorizing the Administrator to set a SIP submission deadline in the action issuing any future CTG. However, the agency is also establishing a default submission deadline of no later than 24 months after the effective date of the action issuing the CTG, which is grounded in our overall approach for RACT SIP revisions outlined in CAA section 182(b), in the event that the Administrator does not set an alternative submission deadline as part of a CTG action.

While CAA section 182(b)(2) addresses the submission requirements for RACT SIP revisions triggered by new CTGs, the CAA is otherwise silent regarding the schedule for implementation of those RACT SIP revisions triggered by new CTGs. When new CTGs are issued, these RACT SIP revisions would be applicable to areas classified Moderate or higher, and to any portion of a state located in an OTR. For CTGs in effect at the time of initial area designations for a revised NAAQS, the EPA has interpreted the relevant CAA provisions to require implementation of related RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of initial designations for the revised NAAQS (80 FR 12279; March 6, 2015). For RACT SIP revisions triggered by new CTGs issued after initial area designations, we are adopting the proposed default implementation deadline of no later than January 1 of the third year after the associated SIP revision submission deadline. We anticipate that this adopted default implementation deadline will provide an overall RACT schedule similar to that for sources subject to CTG requirements upon initial area designations.

We are also articulating in this final rule the Administrator's authority to establish an alternative to the default deadline for implementing RACT SIP revisions, as part of the action

issuing a new CTG. Under this option, setting a RACT SIP revision implementation deadline as part of a CTG action would allow the Administrator to tailor the implementation timeframe to the particular technical considerations and attainment objectives associated with the sources subject to the CTG and the overall attainment schedule. The adopted approaches for establishing RACT SIP submission and implementation deadlines would apply to covered sources in nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations.

c. Comments and Responses. Comment: Several commenters stated that a default submission deadline is not necessary for RACT SIP revisions triggered by the issuance of a CTG after initial area designations. They noted that the CAA expressly authorizes the Administrator to set a RACT SIP submission deadline as part of the related CTG document, and that a default deadline is either redundant or could be interpreted to restrict the Administrator's authority.

Response: The EPA agrees with commenters that CAA section 182(b)(2) authorizes the Administrator to set a RACT SIP submission deadline as part of the related CTG document. As discussed previously, CAA section 182(b)(2) expressly requires that states submit RACT SIP revisions triggered by new CTG issuance within a period established by the Administrator, and we interpret this provision to authorize—but not require—the Administrator to set a RACT SIP submission deadline in the action issuing the CTG. As a result, we are adopting the proposed default SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, in addition to affirming in this final rule the Administrator's existing authority to set an alternative RACT SIP submission deadline as part of the action issuing the CTG.

C. Requirements for RACM: Consideration of Sources of Intrastate Transport of Pollution

1. Summary of Proposal

As discussed in Section III.F.2 of this preamble, the EPA proposed to require that, for each nonattainment area for which an attainment demonstration is required (*see* Section III.D of this preamble), an air agency shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The EPA further proposed to codify the existing requirement under CAA section 172(c)(6) that, in addition to sources located in an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries), and must require other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. This proposed rulemaking provision is consistent with SIP elements required under the CAA, as well as existing EPA interpretations of CAA section 172(c)(6) as articulated in previous NAAQS implementation rulemakings.

2. Final Rule

The EPA is finalizing the requirement regarding consideration of "other control measures" for intrastate sources of pollution, as proposed. CAA section 172(c)(6) requires that SIP provisions include enforceable emission limitations and other control measures, means or techniques as may be necessary or appropriate to attain a standard by the applicable attainment date. The EPA interprets this provision to include "additional reasonable measures," which are those measures and technologies that can be applied to any emissions source within the state's jurisdiction, including those outside of a nonattainment area. Upwind sources within a state may have a significant impact on air quality in a downwind nonattainment area, and failure to consider and require, as appropriate, reasonable control measures for these sources may preclude

attainment of a NAAQS by the attainment date. Though not directly a part of a nonattainment area RACM analysis, the EPA has addressed this "other control measures" provision in the preamble discussions for previous NAAQS implementation rulemakings,[34] and for clarity is codifying this interpretation in this final rule at 40 CFR 51.1312(c). As discussed in Section III.F of this preamble, the EPA is otherwise adopting all RACM requirements for purposes of the 2015 ozone NAAQS, based on the rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

3. Comments and Responses

Comment: A number of commenters opposed the EPA's interpretation of CAA section 172(c)(6) as applying to emissions sources outside of designated nonattainment areas. As one commenter stated, the plain language of CAA section 172 in general focuses its discussions and references to sources within a designated nonattainment area, and makes no mention of requiring emission reductions for sources outside the nonattainment area.

Response: The EPA disagrees with the commenters concerning the proper application of CAA section 172(c)(6). Unlike other SIP requirements under CAA section 172(c)(1), such as RACM/RACT-level controls on sources located in a nonattainment area, CAA section 172(c)(6) is not limited by its terms to sources located in the nonattainment area. Upwind sources within a state may have a significant impact on air quality in a nonattainment area, and CAA section 172(c)(6) imposes a potential obligation upon states to impose emission controls on sources located outside a designated nonattainment area that are in addition to, and beyond those,

[34] *See* the Phase 2 proposed rulemaking (68 FR 32829; June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623; November 29, 2005), and the final rule to implement the $PM_{2.5}$ NAAQS (81 FR 58035; August 24, 2016).

otherwise required on sources located the nonattainment area, if necessary or appropriate for purposes of attainment by the attainment date.

Comment: Some commenters contended that emissions from sources outside a nonattainment area, if nearby and affecting a nonattainment area's ability to timely attain, should be accounted for in setting nonattainment area boundaries as part of the designations process under CAA section 107(d).

Response: The EPA agrees with commenters that a designated nonattainment area should already include the nearby sources that, at the time of designations, were determined to be contributing to violations in the area. But we disagree that the designations process under CAA section 107(d) is the exclusive approach for identifying relevant contributing sources for a nonattainment area, as there may be additional contributing sources within a state that were not sufficiently "nearby" the area, or were otherwise not identified in the nonattainment area designations process as contributing to violations in the area. Consistent with our existing policy, the EPA interprets CAA section 172(c)(6) as imposing a separate obligation to consider and control sources located outside of a nonattainment area but within a state's jurisdiction, if necessary or appropriate to attain a standard by the applicable attainment date.

Comment: Multiple commenters interpreted the EPA's proposal as imposing a mandatory requirement for states to consider and implement emission controls for intrastate sources located outside of a designated nonattainment area. Some commenters characterized the proposal as requiring RACM outside a nonattainment area, where other commenters requested that we further clarify a state's discretion, under CAA section 172(c)(6), to consider and require "other control measures" for sources located outside of a nonattainment area.

Response: The EPA believes our interpretation of CAA section 172(c)(6), *under certain circumstances*, establishes a mandatory requirement for states to consider and implement emission controls for sources inside the state but outside of a designated nonattainment area. The language of the statute, and our adopted regulatory text in 40 CFR 51.1312(c), describe a conditional requirement for placing controls such sources, *i.e.*, states are required to impose controls on sources located outside of a nonattainment area but within the state's jurisdiction, only in circumstances where that is necessary or appropriate to provide for attainment by the attainment date, because the emission controls required on sources *within* the nonattainment area are not sufficient to provide for attainment by that date. This qualification indicates that the obligation is tied to the attainment needs of the nonattainment area in question and does not apply more broadly. Further, the EPA emphasizes that we do not interpret section 172(c)(6) to automatically require states to conduct an evaluation of all sources and all potential controls throughout the entire state regardless of attainment needs. However, if necessary to achieve attainment by the applicable attainment date, the EPA believes the CAA obligates states to place emission controls on significant emissions sources elsewhere within the state as needed to achieve the necessary reductions.

D. Nonattainment NSR Offset Requirement: Interprecursor Trading for Ozone Offsets

1. Summary of Proposal

In response to a petition for reconsideration granted on November 5, 2015, the EPA proposed to reaffirm our longstanding policy regarding IPT for ozone, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5,[35] by re-proposing the

[35] The EPA originally added these provisions specific to ozone to the NNSR regulation in 2015 as part of the final 2008 Ozone NAAQS SIP Requirements Rule. *See* 80 FR 12264 at 12288.

existing regulatory provisions with revised text, and adding specific criteria for developing and implementing an IPT program.[36] In addition, the EPA indicated that the re-proposed IPT provision, when finalized, would supersede any previous ozone IPT policy articulated in earlier EPA guidance.[37] Further, the November 17, 2016, proposal explained that the EPA proposed no other changes to the existing requirements in the NNSR regulations.[38]

The proposal noted the EPA's continued interpretation that the CAA accommodates the use of technically supported IPT to satisfy the NNSR offset requirement. As discussed in greater detail in the Comments and Responses section that follows, the EPA stated at proposal that the CAA allows the total annual tonnage of emissions of one ozone precursor to be offset by reductions in total actual annual emissions of another ozone precursor (in units of tons per year (tpy)) pursuant to an IPT ratio that shows the reductions will have an equivalent or greater air quality benefit. The proposal explained that the authority to permit IPT is based on the language of section 173(c)(1) of the CAA and the definition of "air pollutant" in section 302(g) of the CAA, and that ozone is the regulated pollutant at issue (rather than NOx or VOC, which are both recognized precursors to the formation of ground-level ozone concentrations).

[36] *See* 81 FR at 81295-8.

[37] The EPA's prior guidance concerning the use of IPT to satisfy the NNSR requirements for emissions offsets was contained in a 2001 EPA document titled "Improving Air Quality with Economic Incentive Programs" (January 2001). The EPA's policy on IPT for ozone, as finalized through this rulemaking, supersedes the information contained in that earlier document specifically with respect to IPT.

[38] In the proposal, the EPA did not propose to change or seek comment on any existing NNSR emissions offsets requirements contained in the NNSR regulations at 40 CFR 51.165 and part 51 Appendix S. Existing NNSR emissions offset requirements are based largely on part D of title I of the CAA's nonattainment requirements. These existing requirements include the statutory offset ratios applicable in specific ozone nonattainment areas (based on an area's classification for ozone), geographic restrictions as to where creditable emissions reductions may be obtained and other criteria concerning the creditability of emissions reductions to be used as offsets.

The EPA proposed that states interested in implementing an ozone IPT program must submit the following to the EPA as part of a plan for approval: (1) IPT provision(s), including area-specific default IPT ratio(s),[39,40] where applicable; (2) a description of the air quality model(s) used to develop any default IPT ratio(s); and (3) an accompanying modeling demonstration showing that such ratio(s) provide an equivalent or greater air quality benefit with respect to ground level ozone concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

The EPA recommended that each air agency implementing an IPT program consult with the appropriate EPA Regional office as the air agency develops a modeling protocol to establish a default IPT ratio or ratios[41] for a nonattainment area. The EPA sought comments on the proposed contents of the plan submission and the approach for establishing any default IPT ratios.

---

[39] An IPT ratio sets the appropriate proportion for the amounts of each precursor in tpy of emissions, which is intended to ensure that the substitution of one ozone precursor for another in an offset transaction provides an equivalent or greater air quality benefit with respect to ground level ozone concentrations in the ozone nonattainment area. The IPT ratio is separate and distinct from the statutory offset ratios contained in the CAA that are directly associated with area classifications for ozone nonattainment areas. *See e.g.*, CAA Section 182(b)(5) (establishing an offset ratio of 1.15 to 1 for Moderate areas). Both ratios must be applied in determining the appropriate emissions offset that must be applied for a particular offset transaction if one ozone precursor is being used to offset a different ozone precursor. An example of a simple offset calculation with the application of an IPT ratio would be a major NNSR proposed source in a Moderate area seeking to offset a 200 tpy NO_X increase with reductions in VOC from another source or the respective SIP approved Emission Reduction Credit Bank. First, the 200 tpy NO_X offset is subject to the 1.15 Moderate area offset ratio, then the product is multiplied by the IPT ratio (either area-wide or case-specific derived from technical demonstration). If we assume the IPT ratio in this case is 5, the resulting equation is: (200 tpy NO_X) x ($1.15_{(\text{Moderate area offset ratio})}$) x ($5_{\text{VOC/NO}_X\ \text{(IPT ratio applied)}}$) = 1,150 tpy total NO_X (offset) required for NNSR permitting purposes.

[40] Hereafter referred to as default IPT ratio(s) or default ratio(s).

[41] The draft Technical Guidance Document provided in the docket supports the division of a nonattainment area into sub-areas with a technical demonstration substantiating the need for separate ratios in specific portions of a nonattainment area.

When the EPA published our NNSR implementation rules for $PM_{2.5}$ in 2008, we indicated that, while the new implementation rules allowed air agencies to adopt IPT programs to satisfy the NNSR offset requirements for $PM_{2.5}$, such IPT was not permissible for netting purposes. *See* 73 FR 28340 (May 16, 2008). Consistent with that policy, in the proposal the EPA proposed that an IPT program could not be used for purposes of netting under the NNSR program.

The EPA also indicated in the proposal that we have interpreted the CAA to preclude the use of ozone IPT where an air agency chooses to include emissions reductions attributable to the NNSR air permitting in its initial 15 percent ROP plan for those Moderate or higher ozone nonattainment areas that are satisfying this ROP requirement for the first time under CAA section 182(b)(1)(A)(i). This interpretation results from the fact that the CAA requires that a state's initial ROP plan can be satisfied only via reductions in VOC emissions. Hence, the EPA proposed that such a plan could not count emission reductions attributable to a NNSR permitting program utilizing IPT flexibilities, for ROP purposes.[42]

Finally, the EPA in the November 17, 2016, proposal also explained that IPT could be implemented in several ways; the primary variable being the method in which the IPT ratio for ozone precursors is established by an air agency or permit applicant and applied in a particular ozone nonattainment area. That is, the EPA proposed that states be allowed to choose any of the options presented in the proposal. Accordingly, with the goal of providing flexibility to air agencies and sources, the EPA proposed and sought comment on the following implementation options:

[42] *See* section III.E of this preamble.

a. Case-specific Permit Ozone IPT Ratios. Under a case-specific IPT ratio option, state plans would generally require each permit applicant who chooses to use ozone IPT as the means for satisfying the NNSR emissions offset requirement to calculate and submit to the reviewing authority the appropriate IPT ratio. In choosing this option, the state would be required to include for the EPA's approval a plan submission addressing NNSR program provisions that explicitly authorize case-specific IPT ratios for the particular ozone nonattainment area(s). Also, such a plan submission must include the procedures by which permit applicants may use IPT, including a description of the model(s) that will be used, the calculation of the IPT ratio, and a demonstration that such IPT ratio provides an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area. The EPA also proposed that the state's IPT provision must provide that any IPT ratio that an applicant proposes for an individual permit must be approved by both the reviewing authority and the EPA.

b. Area-specific Default Ozone IPT Ratio. Under the proposed area-specific default IPT option, the EPA proposed that a state plan could include a default IPT ratio that may be used by permit applicants to obtain IPT offsets for all applicable NNSR permits issued in a particular ozone nonattainment area. Under this proposed option, the state's plan submission would be required to provide a description of the model(s) used, the calculated ratio and the technical demonstration substantiating the equivalent or greater ozone benefit in that nonattainment area. The EPA further proposed that a ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not require further EPA approval or be subject to additional public comment each time that ratio is utilized by individual permit applicants.

c. Combination of an Area-specific Default Ozone IPT Ratio and Case-specific IPT Ratios. As explained in the proposed rulemaking, the EPA believes that it is reasonable for air agencies to

have the option of implementing as part of their NNSR programs either a case-specific IPT ratio or a default IPT ratio. The EPA also believes that air agencies with EPA-approved NNSR programs should have the option of implementing a combination of the two proposed options. Such a combined program would enable an air agency to develop a default IPT ratio, while at the same time allowing an individual permit applicant to propose an alternative case-specific IPT ratio (if it can demonstrate to the satisfaction of both the reviewing authority and the EPA that such alternative ratio is appropriate for the proposed offsetting transaction for a specific permit application).

d. Limitations for Implementing Ozone IPT under Appendix S. In the specific case where a state lacks an approved NNSR program and issues NNSR permits under the requirements contained in the EPA's Emission Offset Interpretative Ruling at 40 CFR part 51, Appendix S (Appendix S), the EPA proposed that states would be limited to the use of case -specific IPT ratios.

In addition to the four options proposed for implementing the IPT program for ozone, the EPA proposed to require air agencies to review any default IPT ratio(s) that is included in their EPA-approved IPT program at least every 3 years (from the air agency's prior plan submission containing any such area-specific default IPT ratio(s)) to ensure that the ratio continues to be valid for IPT offsets in the area. To meet this proposed requirement an air agency would need to submit new modeling to confirm that the ratio still defines an equivalent or greater air quality benefit relationship between VOC and NO_X emissions regarding ozone formation in the particular ozone nonattainment area.

At proposal, the EPA included a draft TGD in the docket. The purpose of this TGD was to provide air agencies with guidance on a technical approach to determine ozone impacts from precursor emissions for a specific nonattainment area or for case-by-case determinations.

2. Final Rule and Rationale

In this final rule, the EPA is promulgating a discretionary IPT program for ozone with changes from the proposed rulemaking based on comments received. The final rule allows states to implement their IPT program using any of the proposed implementation options as follows: (1) default IPT ratios, (2) case-specific IPT ratios or (3) a combination of the two options, whereby a proposed source may, at the approval of the reviewing authority, propose a case-specific ratio in lieu of an available default IPT ratio. The following changes are being made in response to comments received: (1) air agencies will not be required to obtain EPA approval of IPT ratios when implementing a case-specific IPT program or when applying default IPT ratios that are not included in the state regulations and the SIP; and (2) the required periodic review of any default IPT ratio must be conducted every 5 years, rather than every 3 years as proposed.

The EPA acknowledges, based on comments received, that the requirement of EPA approval of IPT ratios could impose additional burdens and result in permit delays. Hence, in the final rule, the EPA is eliminating this approval requirement for the case-specific ratios and for default ratios that are not included in state regulations and the SIP. In the spirit of cooperative federalism, the EPA encourages air agencies to both work with the EPA in the development of IPT ratios and notify the EPA after the development of any initial or revised area-specific default IPT ratio for a particular ozone nonattainment area. Finally, the EPA will, of course, also have an opportunity to review and comment on the application of any IPT ratio (default or case-specific) to a particular source or location during the public comment period afforded as part of the NNSR permitting process.

An air agency may choose to include a numerical default ratio in its NNSR regulations and the SIP to make that ratio controlling. Alternatively, if an air agency chooses not to include

any numerical default IPT ratios in its regulations and SIP, EPA approval of the numerical default ratio is no longer required. However, for any such air agency, the final rule still requires the SIP to include (1) the authority to implement IPT; (2) a description of the air quality model(s) that may be used to develop any default IPT ratio; and (3) a description of the approach that the air agency will use to develop any default IPT ratio, which must show that such ratios provide an equivalent or greater ozone air quality benefit in the applicable ozone nonattainment area. The final rule also requires air agencies with IPT programs that authorize case-specific IPT ratios to require permit applicants to include along with the submittal of the proposed case-specific ratio similar information pertaining to the development of the ratio.

A default IPT ratio that is not in a state regulation and an approved SIP would be subject to public comment for each use in individual permits. Therefore, states may want to include numerical default IPT ratios in their regulations and submit them to the EPA for approval as part of the SIP. In such an instance, the regulation containing the area-specific default IPT ratio would be reviewed by the EPA as part of the SIP submission and, if approved, would provide states and other stakeholders with greater certainty that the IPT ratio will be applicable to all permit applications. The validity of a default IPT ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not be subject to additional public comment with regard to its numerical value each time that ratio is utilized by individual permit applicants.

On the other hand, default ratios that are not included in a state regulation and SIP, and, therefore, are not subject to the EPA's approval, may be replaced more rapidly in situations where the ratio is no longer valid, *e.g.*, as a result of a periodic review. An air agency can replace such a ratio with a revised value that will not have to be processed through rulemaking and a

plan revision. Also, if an air agency determines through a periodic review that an existing default ratio is no longer valid and must be revised, the air agency may decide not to revise it but to rely solely on case-specific permit ratios to continue implementing IPT provided that the SIP contains the necessary authority to implement case-specific ratios as part of the NNSR program for ozone. Unlike the default IPT ratios, case-specific IPT ratios will not require periodic review because the ratio used for each individual permit will be based on the most current data representing the ozone chemistry for the area of concern.

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

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

The EPA is including a revised final TGD in the docket for this rulemaking. The purpose of this TGD is to provide air agencies and source owners or operators, where applicable, with guidance on a technical approach to determine ozone impacts from precursor emissions for a specific nonattainment area or for case-specific determinations. The TGD provides a framework

and associated general methodology to apply existing or new empirical relationships between ground level ozone concentrations and the two precursors—NO_X emissions and VOC emissions—to develop the required IPT ratios.[43] Air agencies may use existing modeling analyses or generate their own modeling analyses to provide the basis for the development of IPT ratios.[44]

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

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

[43] Please refer to the TGD included in this final rule docket and the section of the Response to Comments document related to the proposed TGD for further information.
[44] The EPA has not added any regulatory provisions in the NNSR regulations to require permitting authorities to use the data or methods described in the TGD.

particular ozone nonattainment area or will result in such ratio being eliminated (and revised if so desired).

3. Comments and Responses:

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

Response: The EPA has considered the commenters' concerns about the proposed requirement for EPA approval of all IPT ratios for ozone. As a result, we have concluded that it would be appropriate to eliminate the proposed EPA approval requirement as part of the final rule while retaining the following safeguards: the final rule requires the SIP to include (1) the authority to implement IPT; (2) a description of the air quality model(s) that may be used to develop any default ratio; and (3) a description of the approach that the air agency will use to develop any default IPT ratio, which will show that such ratio(s) provide an equivalent or greater ozone air quality benefit in the applicable ozone nonattainment area. Accordingly, the final rule

does not require EPA approval of any IPT ratio. The EPA agrees that the process of EPA approval could lengthen the time required for SIP approval (in the case of default IPT ratios) and for individual permit processing (in the case of case-specific IPT ratios).

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

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

Comment: Seven commenters advocated that the EPA take greater responsibility for the development of default IPT ratios. Five of the seven specifically recommended that the EPA provide the area-specific IPT ratios for ozone nonattainment areas to the air agencies. Two of the commenters, supporting a greater EPA responsibility, called upon the EPA to provide assistance to the states in developing default IPT ratios. All seven commenters generally agreed that the process to develop default IPT ratios is too burdensome for the states to conduct on their own. A

state air agency commenter recommended that the EPA provide a mechanism to establish an alternative ratio "that does not rely upon overly burdensome modeling exercises." The same commenter suggested that the EPA could instead rely upon a ratio of NO_X and VOC inventories rather than photochemical modeling.

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

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

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

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

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

Response: These commenters appear to have misunderstood the EPA's proposal concerning the different options described for states to consider in developing or revising IPT ratios for NNSR permitting. The EPA did not intend to limit the flexibility afforded to states with

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

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

Response: The EPA considered the comments concerning the proposed periodic review and the 3-year review cycle and has concluded that it is appropriate to make certain changes to the proposed approach. Specifically, the requirement for a periodic review of any default ratio is being retained; however, such reviews will be required every 5 years rather than the proposed 3 years. The EPA notes that the requirement for periodic review does not apply to case-specific IPT ratios established for individual permits since each such ratio will be based on the relevant technical information applicable to that particular permitting situation. The EPA disagrees with those commenters recommending that IPT review only occur at the states' discretion. The EPA is establishing a periodic review requirement for area-wide IPT ratios based on a 5-year review cycle to address the potential for changes in atmospheric conditions in an area, and to ensure that the requirement for equivalent or greater ozone benefits continues to be satisfied.

The increase in the length of the review was supported by commenters in response to the proposal. Commenters supporting a review period specifically noted that the 3-year period was too short. Many of the commenters noted the procedural challenges in their own rulemaking process and that other contributing elements to the nonattainment area air shed do not change significantly enough to justify the effort of the review.[45] They concluded that a 3-year review cycle would be too burdensome to adopt as a provision. Further, recent research suggests ozone formation in an area changes over time but is typically fairly consistent in a given 3 to 5-year period.[46] Therefore, the EPA has decided to increase the proposed 3-year review period to a 5-

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

year review period in order to provide air agencies a more reasonable period of time to satisfy the requirement and to afford sufficient time to reflect inventory changes. It is important to note that the final rule would also not require EPA approval of periodically reviewed ratios that are not included in regulations and the SIP. This will enable an air agency to effectuate an updated default ratio more quickly, but such a default ratio will be subject to public comment as part of the NNSR permitting process. However, similar to the development of the initial default ratio, the EPA encourages air agencies to both work with the EPA in the development of a revised default IPT ratio for a particular ozone nonattainment area and notify the EPA after such a ratio has been developed.

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

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

includes a technical demonstration supporting an equivalent or greater ozone air quality benefit for the existing default IPT ratio, and a 5-year periodic review.

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

Response: The EPA disagrees with the commenters' narrow interpretation of "air pollutant" under CAA Section 173(c)(1).[47] CAA section 302(g), which defines "air pollutant," provides that the term includes "… *any precursors to the formation of any air pollutant*, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used." (Emphasis added).[48] Further, CAA section 109(a) directs the Administrator to promulgate NAAQS for "each air pollutant for which air quality criteria have been issued…." The criteria pollutant in this context is ozone—not its precursors. Further,

[47] Section 173(c)(1) of the CAA states that the NNSR offset requirement shall "assure that the total tonnage of increased emissions of the *air pollutant* from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such *air pollutant* from the same or other sources in the area." (Emphases added.)
[48] *See* 57 FR 55620, November 25, 1992, at page 55621 and 55624 (PSD and NNSR Applicability), and 1991 Memo "New Source Review Program Transitional Guidance" at page 5.

in accordance with CAA section 107(d)(4), the air pollutant for which the area is designated nonattainment is ozone, and there is no mention of NO_X or VOC.

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

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

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

Response: The commenter did not identify any specific CAA requirements in their comments with regard to anti-backsliding. Based on the commenter's statement that the

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

proposed rulemaking "unlawfully and arbitrarily authorize[s] controls for that pollutant that are less stringent than required under the pre- existing NAAQS," the commenter appears to be referencing the EPA's application of section 172(e); however, this provision applies to relaxation of a prior NAAQS. The EPA is not relaxing a prior NAAQS in this action, and thus section 172(e) does not apply.

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

The EPA also disagrees with commenter's claims that the proposed rulemaking would put human health at risk and that IPT fails to assure equivalent or greater ozone reduction benefits. In both the proposed and final rule, the use of any IPT ratio is predicated on a demonstration that assures exactly that. *See, e.g.*, 40 CFR 51.165(a)(11)(i)(B)(*I*) and (C). The commenter claimed that the "proposal nowhere finds or demonstrates that any specific trading ratios will be sufficient to assure equivalent or greater ozone reductions in any particular ozone nonattainment areas, nor does it specify with precision the methods and supporting data required to make such a demonstration." These critiques are premature and would only be germane if the commenter sought to dispute the approval of a specific IPT ratio. As discussed earlier in response to comments requesting that the EPA directly develop ratios for each nonattainment

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

area as part of this final rule, the EPA maintains that we cannot, and will not endeavor to, identify all possible specific trading ratios for all areas. Rather, the EPA has defined three different procedural approaches for implementing IPT and provided technical guidance to assist air agencies (and permit applicants, where applicable) in the establishment of such ratios.

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

E. Emissions Inventory and Emissions Statement Requirements

The EPA proposed to clarify our emissions inventory and emissions statement requirements for purposes of the 2015 ozone NAAQS by adding 40 CFR 51.1315. CAA sections 182(a)(1) and 182(a)(3)(A) require states to submit emissions inventories to the EPA. To clarify these statutory requirements within the context of implementing the 2008 ozone NAAQS, the EPA added 40 CFR 51.1115 (80 FR 12264, 12314; March 6, 2015). For purposes of the 2015

ozone NAAQS, we proposed to add 40 CFR 51.1315, to clarify requirements for the emissions inventories required by CAA sections 182(a)(1) and 182(a)(3)(A). We also provided a preamble discussion in the proposed rulemaking to clarify the emissions statement requirements of 182(a)(3)(B), and are finalizing 40 CFR 51.1315 consistent with that discussion in this final rule.

1. Emissions Inventories

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

The emissions inventory requirements for the 2008 ozone NAAQS, found at 40 CFR 51.1115, describe the criteria and timing for base year and periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), respectively. To support the periodic emissions inventory requirement, the EPA proposed revisions to the AERR point source reporting thresholds in AERR Table 1 (40 CFR 51, subpart A, appendix A) to be consistent with the major source thresholds for ozone nonattainment areas. These reporting thresholds are in tons of potential emissions per year. The existing AERR Table 1 includes Moderate area thresholds of 100 tpy for NO_X and VOC, which are the same as the triennial thresholds for all areas. The existing AERR table also includes lower VOC thresholds for Serious, Severe and Extreme areas of 50, 25 and 10 tpy. With the proposed revision, the AERR table would be updated to also explicitly include these same Serious, Severe and Extreme area thresholds for NO_X. The same

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

thresholds as have existed for VOC also apply for NO_X, consistent with definition of "major source" in both 40 CFR 70.2 and 40 CFR 71.2. In addition, the emission thresholds also depend on whether the source is within an OTR in accordance with CAA 184(b)(2). The EPA proposed to include in the AERR table a 50 tpy potential-to-emit (PTE) VOC threshold for sources within an OTR and a 50 tpy PTE NO_X threshold for sources both within an OTR and within a Moderate ozone nonattainment area, proposing to apply the same definition noted earlier in 40 CFR 70.2 and 40 CFR 71.2. Finally, the proposal removed the 100 tpy PTE CO threshold from the AERR tables in Appendix A for ozone nonattainment areas because there is no corresponding major source threshold for CO in the existing or proposed implementing regulations for the ozone NAAQS.

b. Final Rule. The EPA is finalizing the proposed emissions inventory requirements, with the exception of the proposed AERR Table 1 reporting threshold for NO_X sources within an OTR, as explained more fully later. In general, we are providing that air agencies may rely, when appropriate, on their 3-year cycle inventory as described by the AERR to meet the 182(a)(3)(A) periodic inventory obligations, with additional requirements for the reporting of ozone season day emissions and treatment of partial-county inventories.[52] For all of the mobile source inventories used for 2015 ozone NAAQS implementation, states should use the latest emissions

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

models available at the time that the attainment plan inventory is developed.[53] In general, for states other than California that choose to fulfill various modeling requirements by using the latest EPA emissions model, the latest approved version of the MOtor Vehicle Emissions Simulator (MOVES) model should be used to estimate emissions from onroad and certain nonroad transportation sources. States should use the latest available planning emission inputs including, but not limited to, vehicle miles traveled, speeds, fleet mix, SIP control measures and fuels. The current version of MOVES is available at: *https://www.epa.gov/moves*. Other appropriate methods should be used to estimate emissions of nonroad sources not included in the model. For California, consult with the EPA Region 9 for information on the latest approved version of the EMFAC (EMission FACtors) model. EMFAC2014 is the most recently approved model.[54]

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

We are not finalizing our proposal to revise the NO_X reporting threshold for sources within an OTR from 100 tpy to 50 tpy. This revision would have aligned the NO_X reporting threshold with that for VOC sources in an OTR, which is established as 50 tpy in CAA section 184(b)(2) and in subsection 3(ii) of the definition of "major source" in 40 CFR 70.2 and 40 CFR

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

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

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

regarding the interaction between section 182 and 184.[55] We are therefore not finalizing our proposal to revise the NO_X reporting threshold for sources within an OTR, and are retaining the existing general NO_X reporting threshold of 100 tpy. Major stationary sources within an OTR that are also located in ozone nonattainment areas classified Serious and higher would be subject to the corresponding major source thresholds for those area classifications.

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

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

2. Emissions Statements

For nonattainment areas, air agencies must develop, and include in their SIPs, emission reporting programs for certain VOC and NO_X sources in accordance with CAA section 182(a)(3)(B).[56] The required state program defines how air agencies obtain emissions data

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

[56] CAA section 182(a)(3)(B)(2) allows that air agencies may waive, with the EPA's approval, the requirement for emission statements for classes or categories of sources with less than 25 tpy of actual plant-wide NO_X or VOC emissions in nonattainment areas, provided the class or category is included in the base year and periodic inventories required under CAA sections 182(a)(1) and

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

V. Additional Considerations

This section addresses several important SIP-related topics for which the EPA did not propose specific regulatory provisions due to lingering legal issues, scientific unknowns and uncertainties associated with developing and implementing new regulatory requirements and/or

---

182(a)(3)(a), respectively. Emissions in this case must be calculated using emission factors established by the EPA, or other methods acceptable to the EPA. We emphasize that the 25 tpy emissions threshold applies separately for purposes of emissions statement requirements, and does not relate to the major stationary source reporting thresholds for emissions inventories in AERR Table 1.

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

policies. The EPA is using this final rule notice, however, to articulate our existing requirements and policies pertaining to these topics and to inform possible future actions.

A. Managing Emissions from Wildfire and Wildland Prescribed Fire

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

b. Final Recommendation. The EPA continues to recommend that air agencies use the approach described in the final $PM_{2.5}$ SIP Requirements Rule when accounting for emissions from wildfire and wildland prescribed fire. Before explaining this recommendation further, the EPA wishes to emphasize that this recommendation is focused on wildland fire management. There are other uses of prescribed fire and other types of burning that may occur in nonattainment areas, or that may affect downwind nonattainment areas, such as burning of land clearing debris, agricultural burning and burning of logging slash on land where the primary purpose of the logging is for commercial timber sale.[58] The challenges with applying the traditional nonattainment planning framework discussed here are particular to wildland fire and

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

prescribed fire on wildlands. The EPA believes that addressing these other uses of prescribed fire does not present nearly the same level of challenge as does addressing wildland fire, and, thereby, can still be accommodated within the nonattainment planning framework. For example, where these other types of burning currently contribute to ozone levels in a nonattainment area, air agencies may, with an adequate technical demonstration, be able to take credit for reductions in ozone concentrations resulting from improvement in smoke management techniques for these types of prescribed fire where the improvement results in a demonstrated reduction in impacts in the nonattainment area.

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

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

[59] These reasons include concerns raised by commenters on the $PM_{2.5}$ SIP Requirements Rule about the difficulties associated with requiring (or even encouraging) states to incorporate wildland fire emissions into existing nonattainment planning procedures and practices under the CAA; high year-to-year variability and unpredictability with emissions from wildland fires;

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

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

---

uncertainty in the amount of credit to give for reduced wildfire within the planning period and in the amount of benefit that exists after accounting for increases in prescribed fires within the planning period; and the fact that air quality data actually influenced by fire events may ultimately be excluded for regulatory purposes under the provisions of the Exceptional Events Rule (40 CFR 50.14).

uncertain for them to be allowed to have the effect of reducing or increasing the control requirement on conventional anthropogenic sources. The EPA, therefore, recommends that wildland fire emissions generally should be held constant in the air quality modeling over the planning period, regardless of whether wildland fire management practices by land managers are expected, and possibly encouraged or required, to change.

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

A consequence of the recommendation of not expressly accounting for changes in wildland fires in attainment demonstrations is that measures to reduce emissions from wildland fires, such as prescribed fire to prevent catastrophic wildfires or smoke management programs and BSMP for prescribed fires in wildland, need not be included as RACM for the respective fire types. This is because the changes in emissions due to such measures would not be accounted for in determining what is necessary for attainment and/or what would advance the attainment date, which is how the EPA is recommending that RACM be determined. So, for example, in an area

that can attain in 6 years with measures that do not address wildland fire, the EPA does not recommend that states attempt to quantify whether increased prescribed fire could advance the attainment date by 1 year, due to the aforementioned difficulties associated with such quantification.

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

c. Comments and Responses.

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

value for the area. Other commenters disagreed with our recommendation that wildfire emissions be kept constant in projections for the attainment demonstration.

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

B. Transportation Conformity and General Conformity

1. What is conformity?

Conformity is required under CAA section 176(c) to ensure that federal actions are consistent with ("conform to") the applicable state, tribal or federal implementation plan (collectively referred to as the SIP in the remainder of this section). Conformity to the applicable implementation plan means that federal activities will not cause or contribute to new violations of the standards, worsen existing violations or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and nonattainment areas redesignated to attainment that are required to have a CAA section 175A maintenance plan after 1990 ("maintenance areas"). Because certain provisions of section

176(c) apply only to highway and mass transit funding and approval actions, the EPA published two sets of regulations to implement section 176(c).

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

The EPA's general conformity regulations (40 CFR part 51, subpart W and 40 CFR part 93, subpart B) establish the criteria and procedures for determining whether activities not addressed by the transportation conformity rule conform to the appropriate implementation plan. The EPA first promulgated general conformity regulations in November 1993 (58 FR 63214; November 30, 1993)). Subsequently, the EPA finalized revisions to the general conformity regulations on April 5, 2010 (75 FR 17254). The general conformity program ensures that

federal actions not related to highway and transit funding and approval actions will not interfere with the appropriate implementation plan. General conformity also fosters communications between federal agencies and state and local air quality agencies, provides for public notification of and access to federal agency general conformity determinations and allows for air quality review of individual federal actions. More information on the general conformity program is available at *https://www.epa.gov/general-conformity*.

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

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

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

Transportation and general conformity will apply 1 year after the effective date of nonattainment designations for the 2015 ozone NAAQS. CAA section 176(c)(6) provides a 1-year grace period from the effective date of initial designations for any new or revised NAAQS before transportation and general conformity apply in nonattainment areas. The grace period applies even if the area had been designated nonattainment for a prior ozone NAAQS. For additional information on transportation conformity requirements and the 1-year grace period

please refer to the EPA's transportation conformity guidance for the 2015 ozone NAAQS available at: *https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation*.

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

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

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

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

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

1. Summary of Proposal

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

2. Final Rule

[60] USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, available at: *http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046311.pdf*.

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

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

With respect to Extreme ozone nonattainment areas, CAA section 182(e)(5) allows the agency to exercise discretion in approving Extreme area attainment plans that rely, in part, on the future development of new control technologies or improvements of existing control technologies, where certain conditions are met. This discretion can be applied as long as an air agency has demonstrated that: all RACM, including RACT, have been included in the plan; the area's RFP demonstration during the first 10 years after designation does not rely on anticipated

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

future technologies; and the air agency has submitted enforceable commitments to timely develop and adopt contingency measures to be implemented if the anticipated future technologies do not achieve planned reductions. The EPA is continuing to allow air agencies to submit, for Extreme nonattainment areas, enforceable commitments to develop and adopt contingency measures meeting the requirements of 182(e)(5) to satisfy the requirements for attainment contingency measures in CAA sections 172(c)(9) and 182(c)(9). These enforceable commitments must obligate the air agency to submit the required contingency measures to the EPA no later than 3 years before any applicable implementation date, in accordance with CAA section 182(e)(5).[62] We note that this does not, however, relieve air agencies from obligations to submit contingency measures as required by CAA sections 172(c)(9) and 182(c)(9) for periods in the first 10 years after designation.

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

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

upholding that interpretation. *See Louisiana Envt'l Action Network v. EPA*, 382 F.3d 575 (5th Cir. 2004) (*LEAN*); see also 40 CFR 56.5(b).

3. Comments and Responses

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

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

States located in circuits other than the Ninth may elect to rely on the EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as

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

D. Background Ozone

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

[63] For purposes of NAAQS implementation, the EPA considers USB to be any ozone formed from sources or processes other than U.S. manmade emissions of NO_X, VOCs, methane and CO.
[64] The white paper and other workshop details are available at: *https://www.epa.gov/ozone-pollution/background-ozone-workshop-and-information*.

designations in affected areas, and that USB can make meeting nonattainment area requirements unreasonably difficult or costly.[65]

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

The EPA also in 2016 recently finalized revisions to the Exceptional Events Rule to further facilitate review and approval of exceptional events that contribute to USB, such as stratospheric ozone intrusions and wildfires (81 FR 68216; October 3, 2016). Guidance is currently available for demonstrations of exceptional events for high wind dust, and the EPA

---

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

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

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

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

finalized guidance for ozone associated with wildfire events in September 2016.[69] The EPA expects to make available similar guidance for stratospheric ozone intrusions by the end of 2018. However, the EPA is not revising the Exceptional Events Rule or guidance with this rulemaking.

E. Additional Policies and Programs for Achieving Emissions Reductions

1. Multi-pollutant Planning

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

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

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

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

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

[70] Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs available at: *https://www.epa.gov/sites/production/files/2016-05/documents/eeremanual_0.pdf*.
[71] AVERT available at: *http://www3.epa.gov/avert/*.
[72] Available at: *https://www.epa.gov/sites/production/files/2016-05/documents/appendixi_0.pdf*.

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

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

Also, state-level RE requirements have been implemented in 29 states plus Washington, DC, representing all regions of the country.[76] Between the years 2020 and 2030, many state-level

[73] Available at: *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate*.
[74] American Council for an Energy-Efficient Economy (ACEEE) 2013 State Energy Efficiency Scorecard (November 2013), available at: *http://www.aceee.org/state-policy/scorecard/*.
[75] U.S. EPA 2015. Energy and Environmental Guide to Action, Chapter 4 available at: *https://www.epa.gov/statelocalenergy/energy-and-environment-guide-action-chapter-4-energy-efficiency-policies*.
[76] RE requirements include Renewable Portfolio Standards or state-enacted RE requirements on a Mega-Watt (MW) basis. Database of State Incentives for Renewables and Efficiency, March 2013, available at: *http://www.dsireusa.org*.

RPS programs require electric utilities to serve from 15 to 40 percent of their retail sales with renewable power.[77]

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

2. Land Use Planning

Air agencies may also wish to consider strategies that foster more efficient urban and regional development patterns as a long-term air pollution control measure. Resources include the U.S. Department of Housing and Development-DOT-EPA Partnership for Sustainable Communities, as well as the policy and technical guidance documents on land use and related

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

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

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

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

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

travel efficiency available on the EPA's Office of Transportation and Air Quality Web site.[82] These documents provide communities with the information they need to better understand the link between air quality, transportation and land use, and how certain land use policies have the potential to help local areas achieve and maintain healthy air quality. The documents also include methods to help communities account for the air quality benefits of their local land use in their air quality plans.

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

3. Travel efficiency

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

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

related to criteria pollutants. All of these documents are available on the EPA's Office of Transportation and Air Quality Web site.[83]

F. Additional Requirements Related to Enforcement and Compliance

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

G. Applicability of Final Rule to Tribes

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction.[85] The Tribal Authority Rule (TAR) (40 CFR Part 49.1-49.11), which implements CAA section 301(d), sets forth the criteria and process for tribes to apply to the EPA for

---

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

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

[85] On January 17, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating the EPA's 2011 rule titled "Review of New Sources and Modifications in Indian Country" (76 FR 38748) with respect to non-reservation areas of Indian country (*See, Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014)). Under the court's reasoning, with respect to CAA SIPs, a state has primary regulatory

eligibility to administer CAA programs (40 CFR 49.6, 49.7). As discussed in detail in the proposed 2008 Ozone NAAQS SIP Requirements Rule (78 FR 34209; June 6, 2013), tribes are not required to submit TIPs under the TAR. However, should a tribe choose to develop a TIP, this rule is intended to serve as a guide for addressing key implementation issues for areas of Indian country, particularly for any areas of Indian country that may be designated as nonattainment areas separate from surrounding state areas.

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

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under CAA section 301(d) and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose (40 CFR 49.6-49.9). Affected states and tribes with

---

jurisdiction in non-reservation areas of Indian country (*i.e.*, Indian allotments located outside of reservations and dependent Indian communities) within its geographic boundaries unless the EPA or a tribe has demonstrated that a tribe has jurisdiction over a particular area of non-reservation Indian country within the state.

approved TAS must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, we encourage states to extend the same notice to all affected tribes, regardless of their TAS status.

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

VI. Environmental Justice Considerations

The EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not negatively affect the level of protection provided to human health or the environment under the 2015 ozone NAAQS, which are set at levels to protect sensitive populations with an

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

adequate margin of safety.[87] These regulations help clarify the SIP requirements and the NNSR permitting requirements to be met by air agencies in order to attain the 2015 ozone NAAQS as expeditiously as practicable. These requirements are designed to protect all segments of the general population and do not adversely affect the health or safety of minority, low-income or indigenous populations.

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

Response: The EPA is not making any changes to its proposed approach in response to the commenter's request that the EPA require states to utilize specific measures directed to minority, low-income and indigenous people to help address ground-level ozone. In the CAA's framework of cooperative federalism, states are primarily responsible for developing plans for achieving NAAQS in areas within their jurisdiction, based on planning rules and guidance promulgated by the EPA. These planning requirements include (but are not limited to) provisions for implementing emissions controls, tracking progress toward attainment and monitoring and

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

reporting air quality data, with the overarching goal of attaining and maintaining the NAAQS as expeditiously as practical, but no later than the CAA's maximum attainment date. In the $PM_{2.5}$ SIP Requirements Rule, the EPA encouraged states to consider various tools to help users identify areas with minority and/or low-income populations, potential environmental quality issues, a combination of environmental and demographic indicators that is greater than usual and other factors that may be of interest. The EPA included these tools in the $PM_{2.5}$ SIP Requirements Rule because areas designated nonattainment for the $PM_{2.5}$ standards can contain sources of directly emitted pollutants that can have adverse impacts on a local neighborhood scale. By contrast, elevated levels of ambient ozone are the result of secondary urban-scale atmospheric formation involving emissions from ubiquitous sources of ozone precursors (VOC and NO_X) including motor vehicles, large and small industrial processes and consumer products which result in more regional scale impacts further down wind. The EPA encourages states to work with communities to develop ozone-related control strategies that most effectively reduce emissions that contribute to elevated ozone levels.

VII. Statutory and Executive Order Reviews

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

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

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

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

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

C. Paperwork Reduction Act (PRA)

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

The EPA is finalizing these implementing regulations for the 2015 ozone NAAQS so that air agencies will know what CAA requirements apply to their nonattainment areas when the air agencies develop their SIPs or SIP revisions for attaining and maintaining the NAAQS. The intended effect of these implementing regulations is to provide certainty to air agencies regarding

their planning obligations. For purposes of analysis of the estimated paperwork burden,[88] the EPA assumed 57 nonattainment areas,[89] some of which must prepare an attainment demonstration as well as submit an RFP and RACT SIP. The attainment demonstration requirement appears in 40 CFR 51.1308, which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP SIP submission requirement appears in 40 CFR 51.1310, and the RACT SIP submission requirement appears in 40 CFR 51.1312, which implements CAA subsections 172(c)(1) and 182(b)(2), (c), (d), and (e).

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

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

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

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

burden is 633 hours per response, with approximately 2.87 responses per state for 66 state responses from the state air agencies. There are no capital or operating and maintenance costs associated with the proposed rulemaking requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

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

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. The CAA imposes the obligation for states to submit attainment plans to implement the ozone NAAQS. In

this rule, the EPA is clarifying those requirements. Therefore, this action is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-

202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health or safety-based federal standard established pursuant to the CAA.

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

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

J. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

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

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

L. Congressional Review Act (CRA)

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

M. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of

Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator" or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness

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

of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings to enforce these requirements.

VIII. Statutory Authority

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

List of Subjects in 40 CFR Part 51

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

_____

Dated: November 7, 2018.

_____

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

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

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

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

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

APPENDIX A TO SUBPART A OF PART 51—TABLES

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

Pollutant	**Every-year**	**Triennial**	
	Type A Sources [2]	**Type B Sources**	**NAA Sources[3]**
(1) SO_2	≥2500	≥100	≥100
			$PM_{2.5}$ (Serious) ≥ 70
(2) VOC	≥250	≥100	≥100
		within OTR[4] ≥ 50	within OTR ≥ 50
			O_3 (Serious) ≥ 50
			O_3 (Severe) ≥ 25
			O_3 (Extreme) ≥ 10
			$PM_{2.5}$ (Serious) ≥ 70
(3) NO_X	≥2500	≥100	≥100
			O_3 (Serious) ≥ 50
			O_3 (Severe) ≥ 25
			O_3 (Extreme) ≥ 10
			$PM_{2.5}$ (Serious) ≥ 70
(4) CO	≥2500	≥1000	≥ 1000
			CO (all areas) ≥ 100
(5) Lead		≥0.5 (actual)	≥0.5 (actual)
(6) Primary PM_{10}	≥250	≥100	≥100
			PM_{10} (Serious) ≥70
(7) Primary $PM_{2.5}$	≥250	≥100	≥100
			$PM_{2.5}$ (Serious) ≥70

(8) NH_3	≥250	≥100	≥100
			$PM_{2.5}$ (Serious) ≥70

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

* * * * *

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

§ 51.165 Permit requirements.

(a) * * *

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

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

(A) The plan shall indicate whether such precursor substitutions for ozone precursors are to be based on an area-specific default ratio (default ratio) for the applicable ozone nonattainment area,

established in regulations as part of the approved plan, or default IPT ratios for an applicable ozone nonattainment area established in advance by an air agency that are presumed to be appropriate for each permit application in the area, absent contrary information in the record of an individual permit application, or case-specific ratios established for individual permits.

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

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

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

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

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

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

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

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

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

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

* * * * *

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

§ 51.1300 Definitions.

* * * * *

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

(g) *Attainment year ozone season* shall mean the ozone season immediately preceding a nonattainment area's maximum attainment date.

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

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

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

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

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

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

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

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

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

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

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

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

Sec.

* * * * *

51.1304-51.1305	[Reserved]
51.1306	Redesignation to nonattainment following initial designations.
51.1307	Determining eligibility for 1-year attainment date extensions for an 8-hour ozone NAAQS under CAA section 181(a)(5).
51.1308	Modeling and attainment demonstration requirements.
51.1309	[Reserved]
51.1310	Requirements for reasonable further progress (RFP).
51.1311	[Reserved]
51.1312	Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).
51.1313	Section 182(f) NO_X exemption provisions.
51.1314	New source review requirements.
51.1315	Emissions inventory requirements.
51.1316	Requirements for an Ozone Transport Region.
51.1317	Fee programs for Severe and Extreme nonattainment areas that fail to attain.
51.1318	Suspension of SIP planning requirements in nonattainment areas that have air quality data that meet an ozone NAAQS.
51.1319	[Reserved]

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

* * * * *

§§ 51.1304-51.1305 [Reserved]

§ 51.1306 Redesignation to nonattainment following initial designations.

For any area that is initially designated attainment for the 2015 ozone NAAQS and that is subsequently redesignated to nonattainment for the 2015 ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part other than an attainment date is

extended by a period of time equal to the length of time between the effective date of the initial designation for the 2015 ozone NAAQS and the effective date of the redesignation, except as otherwise provided in this subpart. The maximum attainment date for a redesignated area would be based on the area's classification, consistent with Table 1 in § 51.1303.

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

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

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

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

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

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

§ 51.1308 Modeling and attainment demonstration requirements.

(a) An area classified Moderate under § 51.1303(a) shall submit an attainment demonstration that provides for such specific reductions in emissions of VOCs and NO_X as necessary to attain the

primary NAAQS by the applicable attainment date, and such demonstration is due no later than 36 months after the effective date of the area's designation for the 2015 ozone NAAQS.

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

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

(d) *Implementation of control measures*. For each nonattainment area for which an attainment demonstration is required pursuant to paragraph (a) or (b) of this section, the state must provide for implementation of all control measures needed for attainment as expeditiously as practicable. All control measures in the attainment plan and demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding any alternate RACT and/or RACM implementation deadline requirements in § 51.1312.

§ 51.1309 [Reserved]

§ 51.1310 Requirements for reasonable further progress (RFP).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Measures to correct previous RACT requirements; and

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

(b) *Baseline emissions inventory for RFP plans.* For the RFP plans required under this section, at the time of designation as nonattainment for an ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the provisions of subpart A of this part.

States may use an alternative baseline emissions inventory provided that the year selected corresponds with the year of the effective date of designation as nonattainment for that NAAQS. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year. The emissions values included in the inventory required by this section shall be actual ozone season day emissions as defined by § 51.1300(q).

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

(2) *Milestone compliance demonstrations*. For each area subject to the milestone requirements under paragraph (c)(1) of this section, not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the ozone standards have been attained), each state in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. The demonstration under this paragraph must provide for objective evaluation of RFP toward timely attainment of the ozone NAAQS in the area, and may take the form of:

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

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

§ 51.1311 [Reserved]

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

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

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

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

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

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

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

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

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

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

§ 51.1313 Section 182(f) NO_X exemption provisions.

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

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

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

§ 51.1314 New source review requirements.

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

§ 51.1315 Emissions inventory requirements.

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

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

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

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

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

§ 51.1316 Requirements for an Ozone Transport Region.

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

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

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

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

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

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

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

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

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

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

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

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

§ 51.1319 [Reserved]

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

The revisions read as follows:

Appendix S to Part 51–Emission Offset Interpretative Ruling

* * * * *

IV. ***

G. ***

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

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

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

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

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

*****

[FR Doc. 2018-25424 Filed: 12/4/2018 8:45 am; Publication Date: 12/6/2018]