rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.324 to read as follows:

§ 117.324 Rice Creek.

The CSX Railroad Swing Bridge, mile 0.8, in Putnam County, shall open with a 24-hour advance notice to CSX at 1–800–232–0142.

Dated: November 4, 2016.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–27176 Filed 11–9–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2016–0598; FRL–9955–00–OAR]

RIN 2060–AT16

Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to withdraw the federal implementation plan (FIP) provisions that require affected electricity generating units (EGUs) in Texas to participate in Phase 2 of the Cross-State Air Pollution Rule (CSAPR) trading programs for annual emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X). Withdrawal of the FIP requirements is intended to address a decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanding the CSAPR Phase 2 SO_2 budget for Texas to the EPA for reconsideration. The EPA is also proposing to determine that, following withdrawal of the FIP requirements, sources in Texas will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 national ambient air quality standard (NAAQS) for fine particulate matter ($PM_{2.5}$), and that the EPA therefore will have no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) with regard to that NAAQS. Finally, the proposal includes a sensitivity analysis showing that the set of actions the EPA has taken or expects to take in response to the D.C. Circuit's decision, including the removal of Texas EGUs from the two CSAPR trading programs as well as the recent removal of Florida EGUs from Phase 2 of the CSAPR trading programs for ozone-season NO_X emissions, would not adversely impact the analytic demonstration for the Agency's 2012 determination that CSAPR participation meets the Regional Haze Rule's criteria to qualify as an alternative to the application of best available retrofit technology (BART). No changes to the Regional Haze Rule are proposed as part of this rulemaking.

DATES: Comments must be received on or before December 12, 2016. To request a public hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by November 17, 2016. The EPA does not plan to conduct a public hearing unless requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0598, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343–9077; email address: *miller.robertl@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated under CSAPR are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

Category	NAICS * Code	Examples of potentially regulated industries
Industry	221112	Fossil fuel-fired electric power generation.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions in 40 CFR 97.404 and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Overview
II. Background
A. History and Summary of CSAPR
B. CSAPR Participation as a BART Alternative
III. Withdrawal of Certain CSAPR FIP Requirements for Texas EGUs
IV. Texas' Good Neighbor Obligation With Regard to the 1997 Annual $PM_{2.5}$ NAAQS
V. Sensitivity Analysis Regarding CSAPR Participation as a BART Alternative
A. Summary of 2012 CSAPR-Better-Than-BART Analytic Demonstration
B. Impact on 2012 Analytic Demonstration of Actions Responding to the Remand of CSAPR Phase 2 Budgets
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Overview

The EPA promulgated CSAPR in 2011 in order to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(i)(I) to prohibit air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to several NAAQS, including the 1997 annual $PM_{2.5}$ NAAQS.[1] To address Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS, CSAPR established FIP requirements for affected EGUs in Texas, including emissions budgets that apply to the EGUs' collective annual emissions of SO_2 and NO_X. In July 2015, the D.C. Circuit issued a decision on a range of challenges to CSAPR in *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II)* denying most claims but remanding several CSAPR emissions budgets to the EPA for reconsideration, including the Phase 2 SO_2 budget for Texas.[2]

In this action, the EPA proposes to address the remand of the Texas Phase 2 SO_2 budget by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program in Phase 2, which begins with 2017 emissions.[3] Although the court's decision specifically remanded only Texas' Phase 2 SO_2 budget, the court's rationale for remanding that budget also implicates Texas' Phase 2 annual NO_X budget because the SO_2 and annual NO_X budgets were developed through an integrated analysis and were promulgated to meet a common $PM_{2.5}$ transport obligation under CAA section 110(a)(2)(D)(i)(I). Withdrawal of the FIP provisions is intended to address the remand by eliminating the requirement for Texas EGUs to comply with the EPA-established Phase 2 budgets.[4]

Removal of Texas EGUs from the CSAPR trading programs for SO_2 and annual NO_X as proposed would make it necessary to use other means to address any remaining transport obligation for Texas under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 $PM_{2.5}$ NAAQS. In this action, based on a reevaluation of $PM_{2.5}$ data in the CSAPR final rule record in light of the D.C. Circuit's reasoning in another portion of the *EME Homer City II* decision, the EPA is proposing to determine that Texas would not have any such remaining $PM_{2.5}$ transport obligation in Phase 2 of CSAPR. Accordingly, in the absence of a Texas transport obligation with regard to the 1997 $PM_{2.5}$ NAAQS, the EPA is also proposing to determine that the Agency will have no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS.[5]

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

[2] *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II),* 795 F.3d 118, 138 (D.C. Cir. 2015). The court also remanded the Phase 2 SO_2 budgets for three other states and the Phase 2 ozone-season NO_X budgets for eleven states, including Texas. *Id.*

[3] With regard to each of the other remanded budgets, the EPA either has already withdrawn or expects to withdraw the FIP provisions requiring the EGUs in the affected state to participate in the corresponding CSAPR federal trading programs in Phase 2 through other actions, as discussed in section III.

[4] The D.C. Circuit also remanded the CSAPR Phase 2 ozone-season NO_X budget established for Texas EGUs with regard to the 1997 ozone NAAQS. *EME Homer City II,* 795 F.3d at 138. As discussed in section III, in another action the EPA has withdrawn the FIP requirements for Texas EGUs regarding the 1997 ozone NAAQS and has promulgated new FIP requirements for those EGUs regarding the 2008 ozone NAAQS. This proposal has no effect on any CSAPR FIP requirements for Texas EGUs concerning ozone-season NO_X emissions.

[5] Reevaluation of $PM_{2.5}$ data in the CSAPR final rule record in light of the D.C. Circuit's reasoning would similarly support a determination that Texas would have no $PM_{2.5}$ transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 2006 $PM_{2.5}$ NAAQS. However, the EPA is not proposing to make a determination in this action as to any obligation of Texas with regard to that NAAQS because Texas EGUs are not subject to CSAPR requirements with regard to that NAAQS.

Participation in CSAPR is relied on by numerous states as an alternative to meeting source-specific BART requirements under the Regional Haze Rule.[6] In accordance with the provisions of the Regional Haze Rule, the EPA's 2012 determination that implementation of CSAPR meets the criteria for a BART alternative was based on an analytic demonstration that implementation of CSAPR would result in greater reasonable progress than BART toward restoring natural visibility conditions in relevant locations. This proposal includes a sensitivity analysis showing that if the set of actions the EPA has taken or expects to take in response to the D.C. Circuit's remand of various CSAPR Phase 2 budgets had been reflected in that analytic demonstration, the revised analysis still would have demonstrated that implementation of CSAPR in the remaining covered states meets the criteria for a BART alternative for those states. Accordingly, based on consideration of this analysis, the EPA sees no reason to propose any revision to the current Regional Haze Rule provision allowing states whose EGUs continue to participate in a CSAPR trading program for a given pollutant to rely on CSAPR participation as a BART alternative for its BART-eligible EGUs for that pollutant.

At the same time, however, if and when this proposal is finalized, Texas will no longer be eligible to rely on CSAPR participation as an alternative to certain regional haze obligations including the determination and application of source-specific SO_2 BART. Any such remaining obligations are not addressed in this proposed action and would be addressed through other state implementation plan (SIP) or FIP actions as appropriate.[7]

Sections II.A and II.B provide background on CSAPR and on CSAPR participation as a BART alternative, respectively. The proposed withdrawal of the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X is addressed in section III. Section IV discusses the proposal to determine that, following finalization of the proposed withdrawal of the CSAPR FIP requirements related to $PM_{2.5}$, Texas would have no remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 $PM_{2.5}$ NAAQS, and the EPA accordingly would have no obligation to issue new FIP requirements for Texas sources to address such a transport obligation. The sensitivity analysis of the 2012 analytic demonstration supporting CSAPR participation as a BART alternative is described in section V.

II. Background

A. History and Summary of CSAPR

The EPA initially promulgated CSAPR in 2011 to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(i)(I), often referred to as the ''good neighbor'' provision, to prohibit transported air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS.[8] To reduce transported $PM_{2.5}$ pollution, CSAPR sets limits on annual emissions of NO_X and SO_2 as precursors to $PM_{2.5}$. To reduce transported ozone pollution, CSAPR sets limits on ozone-season emissions of NO_X as a precursor to ozone.

CSAPR's emissions limitations are defined in terms of emissions ''budgets'' for the collective emissions from affected EGUs in each covered state. The emissions limitations are phased in, with the Phase 1 and Phase 2 budgets originally scheduled to apply starting in January 2012 and January 2014, respectively. Affected EGUs are subject to FIP provisions requiring them to participate in one or more of several CSAPR federal allowance trading programs established as flexible mechanisms to achieve compliance with the emissions budgets. CSAPR also contains provisions under which the EPA will approve optional SIP revisions that modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport obligations using either the CSAPR federal trading programs or integrated CSAPR state trading programs that apply emissions budgets of the same or greater stringency.[9]

A number of state, industry, and other petitioners challenged CSAPR in the D.C. Circuit, which stayed and then vacated the rule, ruling on only a subset of petitioners' claims. However, in April 2014 the Supreme Court reversed the vacatur and remanded to the D.C. Circuit for resolution of petitioners' remaining claims.[10] The D.C. Circuit then granted the EPA's motion to lift the stay and to toll the rule's deadlines by three years.[11] Consequently, implementation of CSAPR Phase 1 began in January 2015 and implementation of Phase 2 is scheduled to begin in January 2017.

Following the Supreme Court remand, the D.C. Circuit conducted further proceedings to address petitioners' remaining claims. In July 2015, the court issued a decision denying most of the claims but remanding the Phase 2 SO_2 emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 ozone-season NO_X budgets for eleven states to the EPA for reconsideration.[12] Petitions challenging CSAPR amendments promulgated in 2011 and 2012 are currently being held in abeyance pending completion of the EPA's proceedings in response to the D.C. Circuit's remand.[13]

Since receipt of the D.C. Circuit's 2015 decision, the EPA has engaged the affected states to determine appropriate next steps to address the decision with regard to each state. The EPA expects that potentially material changes to the scope of CSAPR coverage resulting from the D.C. Circuit's remand will be limited to Texas, based on the withdrawal of FIP requirements proposed here, and, as discussed below, to Florida, based on the withdrawal of FIP requirements recently finalized in another action. With regard to the remanded Phase 2 SO_2 budgets, as discussed in section III, the EPA expects that EGUs in Alabama, Georgia, and South Carolina will continue to participate in CSAPR trading programs for SO_2 and annual NO_X pursuant to approved SIP revisions (with equally or more stringent emissions budgets), making Texas the only state whose EGUs would no longer participate in these programs because of the remand.

[6] *See* Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 FR 33642 (June 7, 2012) (CSAPR-Better-than-BART rule).

[7] The EPA notes that under 40 CFR 51.308(e)(4), CSAPR implementation is available as a NO_X BART alternative for a state whose EGUs are subject to CSAPR requirements for either annual NO_X emissions or ozone-season NO_X emissions. *See* 77 FR at 33652; *see also supra* note 4.

[8] *See generally* 76 FR 48208.

[9] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[10] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014), *reversing* 696 F.3d 7 (D.C. Cir. 2012).

[11] Order, *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. issued October 23, 2014).

[12] *EME Homer City II,* 795 F.3d at 138.

[13] *Public Service Co. of Oklahoma* v. *EPA,* No. 12–1023 (D.C. Cir.) (challenging amendments published at 76 FR 80760 (December 27, 2011)); *Wisconsin Public Service Corp.* v. *EPA,* No. 12–1163 (D.C. Cir.) (challenging amendments published at 77 FR 10324 (February 21, 2012)); *Utility Air Regulatory Group* v. *EPA,* No. 12–1346 (D.C. Cir.) (challenging amendments published at 77 FR 34830 (June 12, 2012)).

With regard to the remanded ozone-season NO_X budgets, in September 2016 the EPA promulgated a final rule updating CSAPR to address states' good neighbor obligations with regard to the 2008 ozone NAAQS.[14] The rule also responded to the remand of the original Phase 2 ozone-season NO_X budgets established to address transport obligations with regard to the 1997 ozone NAAQS by withdrawing the FIP provisions requiring EGUs in the eleven states with remanded budgets to comply with those budgets for emissions after 2016. The EPA determined that none of those eleven states will have a remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 ozone NAAQS, but for eight of those states, including Texas, the rule established new budgets to address transport obligations with regard to the more stringent 2008 ozone NAAQS. EGUs in the three states with remanded Phase 2 ozone-season NO_X budgets for which the EPA did not establish new budgets—Florida, North Carolina, and South Carolina—are no longer required to participate in a CSAPR trading program for ozone-season NO_X emissions to address ozone transport obligations after 2016. However, because EGUs in North Carolina and South Carolina[15] are expected to continue to participate in a CSAPR trading program for annual NO_X emissions in order to address $PM_{2.5}$ transport obligations, Florida is expected to be the only state originally covered by CSAPR for NO_X emissions for which all such coverage is ending as a result of the EPA's set of actions to address the remand.

Texas EGUs are currently subject to CSAPR FIP provisions requiring participation in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program. Texas EGUs are also subject to FIP provisions requiring participation in other CSAPR federal trading programs for ozone-season NO_X emissions. This proposal would withdraw the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X emissions after 2016, but would have no effect on any CSAPR FIP requirements applicable to Texas EGUs relating to ozone-season NO_X emissions after 2016, which, as discussed in the preceding paragraph, were promulgated in the recently finalized CSAPR Update rule and were not subject to the D.C. Circuit's remand.

B. CSAPR Participation as a BART Alternative

The Regional Haze Rule implements CAA requirements for the protection of visibility, focusing on visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area.[16] CAA section 169A(a)(1) sets a national goal of achieving natural visibility conditions in certain Class I areas.[17] CAA section 169A(b)(2) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward this national goal, including requirements for the application of best available retrofit technology (BART) by any BART-eligible sources[18] that emit any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area. The air pollutants that may cause or contribute to visibility impairment include both SO_2 and NO_X. Under CAA section 110(c), where the EPA disapproves or finds that a state has failed to make such a SIP submittal, the EPA must promulgate a FIP addressing these requirements.

The Regional Haze Rule's BART provisions generally direct states to identify all BART-eligible sources; determine which of those BART-eligible sources are subject to BART requirements because the sources emit air pollutants that may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area; determine source-specific BART for each source that is subject to BART requirements, based on an analysis taking specified factors into consideration; and include emission limitations reflecting those BART determinations in their SIPs.[19] However, the rule also provides each state with the flexibility to adopt an allowance trading program or other alternative measure instead of requiring source-specific BART controls, so long as the alternative measure is demonstrated to achieve greater reasonable progress than BART toward the national goal of achieving natural visibility conditions in Class I areas.[20]

The Regional Haze Rule also sets out criteria for demonstrating that an alternative measure achieves greater reasonable progress than source-specific BART. The regulations include a specific so-called ''better-than-BART'' test that may be satisfied in one of two ways: (1) If the distribution of emissions under the alternative measure is not substantially different than under BART and the alternative measure results in greater emission reductions; or (2) if the distribution of emissions is significantly different and an air quality modeling study for the best and worst 20 percent of days shows an improvement in visibility from the alternative measure relative to BART.[21] In order for the alternative measure to pass this ''better-than-BART'' test based on such an air quality modeling study, the modeling must demonstrate that two criteria (referred to below as ''prongs'') are met: first, visibility does not decline in any Class I area, and second, there is an overall improvement in visibility, determined by comparing the average differences in visibility conditions under BART and the alternative measure across all affected Class I areas. In addition to the specific test, the regulations also include a more general test that allows states (or the EPA) to demonstrate that an alternative measure provides for greater reasonable progress than BART based on the clear weight of evidence.[22]

In 2012, the EPA amended the Regional Haze Rule to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant—either a CSAPR federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant.[23] In

[14] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016) (CSAPR Update rule).

[15] North Carolina EGUs remain subject to FIP provisions requiring participation in a CSAPR trading program for annual NO_X emissions. The EPA's expectation that South Carolina EGUs will continue to participate in a CSAPR program for annual NO_X emissions is based on South Carolina's commitment to submit a SIP revision that will include such requirements, as noted above and discussed in section III.

[16] 40 CFR 51.308 and 51.309. Earlier this year, the EPA proposed amendments to other portions of the Regional Haze Rule but did not propose any substantive amendments to the provisions related to BART. Protection of Visibility: Amendments to Requirements for State Plans, 81 FR 26942 (May 4, 2016).

[17] The 156 mandatory Class I federal areas in which visibility has been determined to be an important value are listed at subpart D of 40 CFR part 81. For brevity, these areas are referred to here simply as ''Class I areas.''

[18] A BART-eligible source is generally a source in any one of 26 specified categories, including fossil fuel-fired steam electric plants, that was not in operation prior to August 7, 1962; was in existence on August 7, 1977; and has the potential to emit 250 tons per year of any air pollutant. *See* 40 CFR 51.301.

[19] 40 CFR 51.308(e)(1).

[20] 40 CFR 51.308(e)(2).

[21] 40 CFR 51.308(e)(3).

[22] 40 CFR 51.308(e)(2)(i)(E).

[23] 40 CFR 51.308(e)(4); *see also generally* 77 FR 33642. Legal challenges to the CSAPR-Better-than-BART rule from state, industry, and other petitioners are pending. *Utility Air Regulatory*

Continued

promulgating the amendment, the EPA relied on an analytic demonstration of an improvement in visibility from CSAPR implementation relative to BART based on an air quality modeling study, in accordance with the second approach to the specific better-than-BART test summarized above. Since the EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.[24]

For purposes of the 2012 analytic demonstration that CSAPR provides for greater reasonable progress than BART, the EPA treated Texas EGUs as subject to CSAPR for SO_2 and annual NO_X (as well as ozone-season NO_X) and treated Florida EGUs as subject to CSAPR for ozone-season NO_X. The EPA recognizes that the treatment of these EGUs in the analysis would have been different if the Florida FIP withdrawal recently finalized and the Texas FIP withdrawal proposed in this action had been known before the demonstration was prepared. In order to address any potential concern about continuing to rely on CSAPR participation as a BART alternative for EGUs in the remaining CSAPR states, the EPA is providing a sensitivity analysis explicitly addressing the potential effect on the 2012 analytic demonstration if the treatment of Texas and Florida EGUs had been consistent with the EPA's expectations for the updated scope of CSAPR coverage following the D.C. Circuit's remand. As discussed in section V below, the analysis supports the continued conclusion that CSAPR participation would achieve greater reasonable progress than BART despite such a change in the treatment of Texas and Florida EGUs. Consequently, the proposed FIP withdrawal does not suggest any reason to consider amending the current Regional Haze Rule provision authorizing the use of CSAPR participation as a BART alternative for BART-eligible EGUs for a given pollutant in states whose EGUs continue to participate in a CSAPR trading program for that pollutant.

III. Withdrawal of Certain CSAPR FIP Requirements for Texas EGUs

As summarized in section I above, the EPA proposes to respond to the D.C. Circuit's remand of the CSAPR Phase 2 SO_2 budget for Texas by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X emissions with regard to emissions occurring after 2016. This section discusses the rationale for this proposed action.

In the CSAPR final rule, the EPA determined that 23 states, including Texas, had transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, or both, and established SO_2 and annual NO_X emissions budgets for each of the states.[25] The first step in the EPA's analysis was to identify $PM_{2.5}$ receptors that were projected to have difficulty attaining or maintaining either the 1997 NAAQS or the 2006 NAAQS in 2012 without emission reductions from CSAPR. In the second step, the EPA identified states that contribute more than a threshold amount of $PM_{2.5}$ pollution (*i.e.,* one percent of the NAAQS) for at least one of those NAAQS to at least one of the identified nonattainment or maintenance receptors in a different state—in other words, a ''linkage'' was determined. In the third step, the EPA projected the SO_2 and annual NO_X emission reductions and the remaining emissions that would be achieved by EGUs in all modeled states at a range of control cost levels as well as the resulting improvements in air quality at each of the identified $PM_{2.5}$ receptors. For annual NO_X, the EPA evaluated a range of control cost levels up to $2,500 per ton, and for SO_2, the EPA evaluated a range of control cost levels up to $10,000 per ton in combination with a NO_X control cost level of $500 per ton. The EPA then set SO_2 and annual NO_X emissions budgets for EGUs in each of the 23 covered states at the remaining emissions corresponding to a combination of SO_2 and annual NO_X control cost levels at which the air quality problems at all, or most, of the receptors linked to that state were projected to be resolved. The budgets were implemented through FIP provisions requiring the affected EGUs in each covered state to participate in allowance trading programs.

In the case of seven states, including Alabama, Georgia, South Carolina, and Texas, the $PM_{2.5}$ air quality problems at all linked receptors were projected to be resolved at an SO_2 control cost level of $500 per ton. The CSAPR SO_2 budgets for these states were therefore set based on the projected SO_2 emissions remaining after the reductions achievable at that control cost level. For the other 16 states covered by CSAPR for $PM_{2.5}$, the air quality problems at all linked receptors were not projected to be resolved until (or after) an SO_2 control cost level of $2,300 per ton, and the CSAPR SO_2 budgets were set based on the projected SO_2 emissions remaining after the reductions achievable at that higher cost level. For all 23 states linked to a $PM_{2.5}$ receptor, the CSAPR annual NO_X budgets were set based on the projected NO_X emissions remaining after the reductions achievable at a control cost level of $500 per ton. The EPA promulgated FIP provisions requiring EGUs in the 16 states whose SO_2 budgets were set based on a $2,300-per-ton SO_2 control cost level to participate in the CSAPR SO_2 Group 1 Trading Program, requiring EGUs in the seven states whose SO_2 budgets were set based on a $500-per-ton SO_2 control cost level to participate in the CSAPR SO_2 Group 2 Trading Program, and requiring EGUs in all 23 states to participate in the CSAPR NO_X Annual Trading Program.

Petitioners challenged the EPA's use of a $500-per-ton control cost level to set the SO_2 budgets for Alabama, Georgia, South Carolina, and Texas, citing an analysis the EPA had prepared for the CSAPR proposal projecting that the air quality problems at certain $PM_{2.5}$ receptors would be resolved at SO_2 control cost levels below $500 per ton. In its July 2015 decision, the D.C. Circuit agreed that because modeling in the rulemaking record from the CSAPR proposal indicated that air quality problems at all $PM_{2.5}$ receptors linked to these four states could have been resolved at SO_2 control costs below $500 per ton, the Phase 2 SO_2 budgets set in the CSAPR final rule based on control costs of $500 per ton may be more stringent than necessary to address the four states' $PM_{2.5}$ transport obligations. The court therefore found the Phase 2 SO_2 budgets for these four states invalid and remanded them to the EPA for reconsideration.[26]

In this action, the EPA is proposing to respond to the remand of the Phase 2 SO_2 budget for Texas by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program with regard to emissions during Phase 2 of those

Group v. *EPA,* No. 12–1342 (D.C. Cir. filed August 6, 2012).

[24] The EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012). The EPA has approved Minnesota's SIP relying on CSAPR participation for BART purposes. 77 FR 34801, 34806 (June 12, 2012).

[25] The EPA also determined in CSAPR and a related supplemental rule that 25 states, including Texas, had transport obligations with regard to the 1997 8-hour ozone NAAQS. In all, 28 states were determined to have transport obligations related to either $PM_{2.5}$, ozone, or both. The EPA's process for determining states' emissions limitations under CSAPR and the associated CSAPR FIP requirements is described at length in the preamble to the CSAPR final rule. *See generally* 77 FR at 48222–71.

[26] *EME Homer City II,* 795 F.3d at 128–29.

programs, which is now scheduled to begin in 2017. Withdrawal of the FIP provisions related to the SO_2 trading program encompasses withdrawal of the requirement for Texas EGUs to comply with the remanded Phase 2 SO_2 budget, thereby addressing the specific rule provision remanded by the court. The EPA is proposing to withdraw the FIP provisions related to annual NO_X in addition to the FIP provisions related to SO_2 because, as just discussed, the CSAPR FIP requirements for SO_2 and annual NO_X applicable to the EGUs in each covered state were determined through an integrated analysis and were promulgated in combination to remedy that state's $PM_{2.5}$ transport obligation. The court's finding that CSAPR's Phase 2 requirements may be more stringent than necessary to address Texas' $PM_{2.5}$ transport obligation therefore implicates the state's Phase 2 budgets for both SO_2 and annual NO_X.

The proposed withdrawal of the FIP requirements would be consistent with the approach the EPA has taken in response to previous judicial remands regarding obligations of individual states under other EPA rules addressing multiple states' transport obligations. For example, in *Michigan* v. *EPA,* the court found that the EPA had failed to adequately support the inclusion of Wisconsin in the NO_X SIP Call.[27] The EPA responded to that remand by amending the rule to exclude Wisconsin.[28] Similarly, in *North Carolina* v. *EPA,* the court found that the EPA had failed to adequately support the inclusion of Minnesota in the Clean Air Interstate Rule (CAIR) with regard to the 1997 annual $PM_{2.5}$ NAAQS as well as the corresponding CAIR FIP provisions applicable to Minnesota units.[29] The EPA responded to that remand by indefinitely staying CAIR's $PM_{2.5}$ transport obligation for Minnesota as well as the CAIR FIP provisions requiring Minnesota units to participate in CAIR's federal trading programs for SO_2 and annual NO_X.[30]

The proposed withdrawal of FIP requirements is also consistent with the actions the EPA either has already taken or expects to take to address the D.C. Circuit's remand of other CSAPR Phase 2 budgets. With regard to the remanded Phase 2 ozone-season NO_X budgets for eleven states, the EPA withdrew the FIP provisions requiring compliance with those budgets in a rule promulgated earlier this year updating CSAPR to address states' transport obligations with regard to the 2008 ozone NAAQS. Specifically, the EPA amended the FIP provisions applicable to EGUs in the eleven states with remanded budgets to eliminate the CSAPR FIP requirements related to the 1997 ozone NAAQS with regard to emissions occurring after 2016, coincident with the transition from CSAPR Phase 1 to CSAPR Phase 2.[31] The EPA determined that none of the eleven states would have remaining transport obligations under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 ozone NAAQS following the FIP withdrawal.[32] However, the EPA also determined that eight of the states have transport obligations under that section with regard to the more stringent 2008 ozone NAAQS, and established new CSAPR ozone-season NO_X budgets for those states related to that NAAQS starting with emissions occurring in 2017.[33]

With regard to the remanded Phase 2 SO_2 budgets for Alabama, Georgia, and South Carolina, the EPA either has addressed or expects to address the remand through withdrawal of the relevant FIP requirements in the context of SIP approval actions for these states. As discussed in section II.A above, the CSAPR regulations provide each covered state with the option to meet its transport obligations through SIP revisions replacing the federal trading programs and requiring the state's EGUs to participate in integrated CSAPR state trading programs that apply emissions budgets of the same or greater stringency.[34] Under the CSAPR regulations, when such a SIP revision is approved, the corresponding FIP provisions are automatically withdrawn. As discussed in section II.B above, the Regional Haze Rule allows states to rely on CSAPR participation for a given pollutant—through either a CSAPR federal trading program or an integrated CSAPR state trading program—as a BART alternative for that pollutant.

Before proposing this action, the EPA communicated with officials in Alabama, Georgia, South Carolina, and Texas regarding the EPA's intent to respond to the remand of the Phase 2 SO_2 budgets by withdrawing the FIP provisions requiring the states' EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X.[35] The EPA explained that the state would lose its ability to rely on CSAPR participation as a BART alternative for SO_2 and/or NO_X if its EGUs no longer participated in the CSAPR trading programs, but that the state could preserve that ability, if desired, by submitting a CSAPR SIP revision replacing the CSAPR federal trading programs with integrated CSAPR state trading programs applying state-established budgets no less stringent than the remanded federally-established budgets.[36] Alabama, Georgia, and South Carolina have indicated their preference to pursue the SIP revision option. The EPA has already approved Alabama's CSAPR SIP revision, and the FIP provisions requiring its EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X, including the requirements to comply with the federally-established SO_2 and annual NO_X budgets, have therefore been automatically withdrawn.[37] Georgia and South Carolina have committed to submit CSAPR SIP revisions,[38] and the EPA is not

[27] 213 F.3d 663, 681 (D.C. Cir. 2000). Both the court's decision and the EPA's response were limited to the NO_X SIP Call's requirements related to the 1979 1-hour ozone NAAQS, because the rule's parallel requirements related to the 1997 8-hour ozone NAAQS had already been indefinitely stayed as to all states.

[28] Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules, 69 FR 21604, 21636–37 (April 21, 2004).

[29] 531 F.3d 896, 926–28 (D.C. Cir. 2008).

[30] Administrative Stay of Clean Air Interstate Rule for Minnesota; Administrative Stay of Federal Implementation Plan to Reduce Interstate Transport of Fine Particulate Matter and Ozone for Minnesota, 74 FR 56721, 56722 (November 3, 2009).

[31] *See* 81 FR at 74576.

[32] *See* 81 FR at 74524.

[33] *Id.*

[34] *See* 40 CFR 52.38 and 52.39.

[35] *See* memo entitled ''The U.S. Environmental Protection Agency's Plan for Responding to the Remand of the Cross-State Air Pollution Rule Phase 2 SO_2 Budgets for Alabama, Georgia, South Carolina and Texas'' from Janet G. McCabe, EPA Acting Assistant Administrator for Air and Radiation, to EPA Regional Air Division Directors (June 27, 2016), available at *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_SO2_Remand_Memo.pdf* and in the docket for this proposed action. The memo directs the Regional Air Division Directors to share the memo with state officials. The EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

[36] Although the D.C. Circuit remanded the states' Phase 2 SO_2 budgets because it determined that the budgets may be more stringent than necessary to address the states' identified $PM_{2.5}$ transport obligations, nothing in the court's decision affects the states' authority to seek incorporation into their SIPs of state-established budgets as stringent as the remanded federally-established budgets or limits the EPA's authority to approve such SIP revisions. *See* CAA sections 116, 110(k)(3).

[37] Air Plan Approval; Alabama; Cross-State Air Pollution Rule, 81 FR 59869 (August 31, 2016).

[38] *See* letters to Heather McTeer Toney, Regional Administrator, EPA Region 4, from Judson H. Turner, Director of the Environmental Protection Division, Georgia Department of Natural Resources (May 26, 2016) and from Myra C. Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control (April 19, 2016), available in the docket for this proposed action. The EPA has conditionally approved the CAA section 110(a)(2)(D)(i)(II) prong 4 visibility element for multiple NAAQS in the Georgia and South Carolina SIPs based on each state's commitment to submit a CSAPR SIP revision. 81 FR 65899, 65900 (September 26, 2016)

Continued

proposing withdrawal of the CSAPR FIP provisions for their EGUs based on the expectation that such withdrawal will be automatically accomplished as a result of SIP approval actions.[39] Because Texas has not indicated an intent to submit a CSAPR SIP revision, the EPA is proceeding with this proposed action to withdraw the FIP requirements for Texas EGUs, consistent with the intended approach previously communicated to officials for all four states.

The EPA requests comment on the proposed withdrawal of the FIP provisions requiring Texas EGUs to participate in the CSAPR trading programs for SO_2 and annual NO_X with regard to emissions occurring after 2016.

IV. Texas' Good Neighbor Obligation With Regard to the 1997 Annual $PM_{2.5}$ NAAQS

Withdrawal of the CSAPR FIP requirements as proposed in section III above would revive the need to consider Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS and to address any remaining obligation through other means. As summarized in section I above, the EPA proposes to determine that Texas would have no remaining transport obligation under this section with regard to this NAAQS following withdrawal of the FIP requirements, and consequently also proposes to determine that the EPA will have no obligation to issue new FIP requirements as to Texas's transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS after withdrawal of the current FIP requirements. This section discusses the rationale for these proposed determinations.

In the CSAPR rulemaking, one of the receptors that the EPA projected would have difficulty attaining and maintaining both the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS was a receptor located in Madison County, Illinois (monitor ID 171191007).[40] The modeling for the CSAPR final rule showed that Texas was projected to contribute more than the threshold amount of $PM_{2.5}$ pollution necessary in order to be considered ''linked'' to the Madison County receptor for annual $PM_{2.5}$.[41] Based on the linkage for the 1997 annual NAAQS, the EPA consequently determined emissions limitations for SO_2 and annual NO_X from Texas EGUs and promulgated FIP requirements reflecting these emission limitations.[42] These are the FIP requirements that the EPA is now proposing to withdraw in order to address the D.C. Circuit's remand of the Phase 2 SO_2 budget for Texas.

In evaluating what, if any, remaining transport obligation Texas would have under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 $PM_{2.5}$ NAAQS following withdrawal of the current FIP requirements as proposed, the EPA has reexamined data in the CSAPR final rule record in light of the D.C. Circuit's other holdings in *EME Homer City II,* specifically the court's rationale for remanding several Phase 2 ozone-season NO_X budgets. In the CSAPR rulemaking, for purposes of identifying receptors projected to have air quality problems and determining states that were linked to those receptors and which therefore may have transport obligations, the EPA used air quality projections for the year 2012, which was also the intended start year for implementation of the Phase 1 budgets. The CSAPR final rule record also contained air quality projections for 2014, which was the intended start year for implementation of the Phase 2 budgets. The 2014 modeling results showed that some ozone receptors projected to have air quality problems in 2012 would no longer be projected to have air quality problems in 2014 before considering the emission reductions from CSAPR, and petitioners argued that the EPA therefore lacked authority to establish Phase 2 ozone-season NO_X emissions limitations for EGUs in states linked solely to those ozone receptors. The D.C. Circuit agreed and held the Phase 2 ozone-season NO_X budgets for ten states invalid on that basis.[43]

Although not discussed in the court's decision, the CSAPR final rule record contains projections of 2014 air quality for the Madison County $PM_{2.5}$ receptor that are analogous to the projections of 2014 air quality for the ozone receptors described above. Specifically, the 2014 modeling results projected that the Madison County receptor would have a maximum design value for annual $PM_{2.5}$ of 15.02 micrograms per cubic meter ($\mu g/m^3$) before considering the emissions reductions from CSAPR.[44] This projected value is below the value of 15.05 $\mu g/m^3$ that the EPA used to determine whether a particular $PM_{2.5}$ receptor should be identified as having air quality problems that may trigger transport obligations in upwind states with regard to the 1997 annual $PM_{2.5}$ NAAQS.[45] The Madison County receptor was the only $PM_{2.5}$ receptor with projected air quality problems to which Texas was found to be linked based on the EPA's air quality modeling for the CSAPR final rule. Therefore, given that the Madison County receptor was projected to no longer have air quality problems sufficient to trigger transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS in the EPA's 2014 base case modeling for the CSAPR final rule, and given the D.C. Circuit's holding discussed above with regard to the Phase 2 ozone-season NO_X budgets, the EPA proposes to find that, as of Phase 2 of CSAPR, Texas would not significantly contribute to nonattainment in, or interfere with maintenance by, any other state of the 1997 annual $PM_{2.5}$ NAAQS following withdrawal of the current CSAPR FIP requirements applicable to Texas EGUs with regard to that NAAQS. Accordingly, the EPA also proposes to determine that the Agency has no obligation to issue new FIP requirements as to Texas under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS after withdrawal of the current FIP provisions requiring Texas EGUs to participate in Phase 2 of the CSAPR federal trading programs for SO_2 and annual NO_X.

The EPA requests comment on the proposed determinations that Texas will no longer have any remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 $PM_{2.5}$ NAAQS following finalization of the proposed withdrawal of the FIP provisions requiring Texas EGUs to participate in the SO_2 and annual NO_X trading programs during Phase 2 of CSAPR, and that the EPA accordingly will have no obligation to issue new FIP requirements for Texas sources to address such a transport obligation.

(Georgia); 81 FR 56512, 56513 (August 22, 2016) (South Carolina).

[39] If the EPA does not receive the expected SIP submittal from either of these states by the deadline provided in its respective commitment letter or disapproves such a SIP submittal, the EPA will propose to withdraw the FIP provisions requiring that state's EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X, consistent with the action proposed here for Texas EGUs.

[40] 76 FR at 48233, 48235.

[41] 76 FR at 48241.

[42] The modeling for the CSAPR final rule also linked Texas to the Madison County receptor with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, but the EPA did not rely on the linkage with regard to that NAAQS as a basis for establishing CSAPR FIP requirements for Texas EGUs. *See* 76 FR at 48243, 48214.

[43] *EME Homer City II,* 795 F.3d at 129–30. The court also remanded the Phase 2 ozone-season NO_X budget for an eleventh state (Texas), but on different grounds.

[44] *See* projected 2014 base case maximum design value for Madison County, Illinois receptor 171191007 at B–41 of the Air Quality Modeling Final Rule Technical Support Document, Docket ID No. EPA–HQ–OAR–2009–0491–4140 (June 2011) (CSAPR Final Rule Technical Support Document), available in the docket for this proposed action.

[45] 76 FR at 48233.

V. Sensitivity Analysis Regarding CSAPR Participation as a BART Alternative

As summarized in section II.B above, in 2012 the EPA amended the Regional Haze Rule to authorize states whose EGUs participate in CSAPR trading programs for a given pollutant to rely on CSAPR participation as a BART alternative for that pollutant, basing that determination on an analytic demonstration that implementation of CSAPR as expected to take effect at the time of the 2012 revision would achieve greater reasonable progress than BART toward the national goal of natural visibility conditions in Class I areas. This section discusses a sensitivity analysis to the 2012 analytic demonstration showing that the analysis would have supported the same conclusion if the actions the EPA has proposed to take or has already taken in response to the D.C. Circuit's remand of various CSAPR Phase 2 budgets—specifically, the withdrawal of $PM_{2.5}$-related CSAPR Phase 2 FIP requirements for Texas EGUs proposed in this action and the recently finalized withdrawal of ozone-related CSAPR Phase 2 FIP requirements for Florida EGUs—were reflected in that analysis.

A. Summary of 2012 CSAPR-Better-Than-BART Analytic Demonstration

When promulgating the 2012 CSAPR-Better-than-BART rule, the EPA relied on an analysis showing that CSAPR implementation meets the Regional Haze Rule's criteria for a demonstration of greater reasonable progress than BART toward natural visibility conditions as set forth in 40 CFR 51.308(e)(3).[46] The analytic demonstration included an air quality modeling study whose results passed the two-pronged test described in section II.B above. The first prong ensures that the alternative program will not cause a decline in visibility at any affected Class I area. The second prong ensures that the alternative program results in improvements in average visibility across all affected Class I areas as compared to adopting source-specific BART. Together, these tests ensure that the alternative program provides for greater visibility improvement than would source-specific BART.

In the air quality modeling study conducted for the 2012 analytic demonstration, the EPA projected visibility conditions in affected Class I areas[47] based on 2014 emissions projections for two control scenarios and used this modeling in conjunction with the 2014 base case emissions projections and air quality modeling from the CSAPR final rule record.[48] One control scenario represents ''Nationwide BART'' and the other control scenario represents ''CSAPR + BART-elsewhere.'' The Nationwide BART scenario reflects projected SO_2 and NO_X emissions from all EGUs nationwide (except Alaska and Hawaii) after the application of source-specific BART controls to all BART-eligible EGUs. In the CSAPR + BART-elsewhere scenario, EGU SO_2 and NO_X emissions reductions attributable to CSAPR were applied throughout the 28-state CSAPR region wherever EGUs are subject to CSAPR requirements for the respective pollutants, and BART controls for SO_2 and NO_X were applied to all BART-eligible EGUs outside the CSAPR region as well as to BART-eligible EGUs in the CSAPR region that are not subject to CSAPR requirements for the respective pollutants.[49] The latter scenario reflects the fact that source-specific BART would remain a regional haze SIP element in states and for pollutants not covered by CSAPR requirements. In the base case, neither BART controls nor the EGU SO_2 and NO_X emissions reductions attributable to CSAPR were reflected.

For all BART-eligible EGUs in the Nationwide BART scenario and for BART-eligible EGUs not subject to CSAPR for a particular pollutant in the CSAPR + BART-elsewhere scenario, the modeled emission rates were the presumptive EGU BART limits for SO_2 and NO_X as specified in the BART Guidelines,[50] unless an actual emission rate at a given unit with existing controls was lower, in which case the lower emission rate was modeled.[51] The estimates of CSAPR annual NO_X and SO_2 emissions from EGUs for the CSAPR + BART-elsewhere control scenario were based on the CSAPR Phase 2 budgets promulgated in the CSAPR final rule, except that proposed rather than final ozone-season NO_X budgets were used for several states because their budgets were not final at the time the modeling for the CSAPR + BART-elsewhere scenario was performed.[52]

For the CSAPR-Better-than-BART final rule, the EPA also conducted an additional sensitivity analysis to address instances where certain CSAPR budgets were increased after promulgation of the original CSAPR final rule.[53] The overall magnitude of the SO_2 budget increases (for nine states) was 129,295 tons per year, with budget increases for Texas and Georgia accounting for approximately 70 percent of that total. In addition, there was an overall increase in annual NO_X budgets (for thirteen states) of 49,818 tons per year. In the sensitivity analysis, the EPA noted the dominance of sulfate impacts on visibility for each control scenario and relatedly noted that the vast majority of the projected visibility improvements in the CSAPR + BART-elsewhere scenario were attributable to the SO_2 reductions in that scenario, which were much larger than the SO_2 reductions in the Nationwide BART scenario.[54] This was especially true in the sixteen Class I areas that were identified as being most impacted by Texas and Georgia (all in the South). The EPA also concluded that the impact on the modeled visibility impacts at Class I areas from the overall NO_X budget increases would be negligible. The EPA therefore focused the sensitivity analysis on the increases in the SO_2 budgets for Texas and Georgia and considered highly conservative assumptions for the air quality impacts

[46] *See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA–HQ–OAR–2011–0729–0014 (December 2011) (2011 CSAPR/BART Technical Support Document), available in the docket for this proposed action.

[47] The EPA identified two possible sets of ''affected Class I areas'' to consider for purposes of the study and found that implementation of CSAPR met the criteria for a BART alternative whichever set was considered. *See* 77 FR at 33650.

[48] For additional detail on the 2014 base case, see the CSAPR Final Rule Technical Support Document, *supra* note 44.

[49] Specifically, because Arkansas, Florida, Louisiana, Mississippi, and Oklahoma were covered by CSAPR only to address ozone transport obligations, for the CSAPR + BART-elsewhere case, EGUs in these states were assumed to be subject to CSAPR requirements for ozone-season NO_X emissions and source-specific BART for SO_2 (for BART-eligible EGUs). EGUs in the remaining CSAPR states, all of which were covered by CSAPR to address $PM_{2.5}$ transport obligations, were assumed to be subject to CSAPR requirements for both annual NO_X and SO_2, and were also assumed to be subject to CSAPR ozone-season NO_X requirements where applicable.

[50] Appendix Y to 40 CFR part 51—Guidelines for BART Determinations under the Regional Haze Rule.

[51] For more details on the emissions and modeling of the scenarios, see the 2011 CSAPR/BART Technical Support Document, *supra* note 46.

[52] The use of proposed rather than final budgets for ozone-season NO_X emissions for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin had no material effect on the overall emissions projections, because for each of the states except Oklahoma, the analysis also reflected a final, comparably stringent budget for annual NO_X emissions, and while Oklahoma has no CSAPR budget for annual NO_X emissions, its final Phase 2 ozone-season NO_X budget was unchanged from the proposal.

[53] *See* memo entitled ''Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets,'' Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012) (2012 CSAPR/BART sensitivity analysis memo), available in the docket for this proposed action.

[54] *Id.* at 1–2.

that would result from those budget increases in order to ensure that the conclusions from the modeling analysis remained robust in light of all the budget increases.

The CSAPR-Better-than-BART modeling analysis showed that the CSAPR + BART-elsewhere alternative passed both prongs of the two-pronged test described in section II.B above and that CSAPR implementation therefore met the Regional Haze Rule's criteria for a BART alternative. The first prong of the test—*i.e.,* whether the proposed BART alternative would result in a decline in visibility in any Class I area—was evaluated by comparing projected visibility conditions under the CSAPR + BART-elsewhere case and the base case. The CSAPR + BART-elsewhere scenario did not show visibility degradation relative to the base case at any of the affected Class I areas on either the 20 percent best or the 20 percent worst visibility days. The second prong of the test—*i.e.,* whether the proposed BART alternative would result in an overall improvement in visibility across all affected Class I areas relative to BART—was evaluated by comparing projected visibility conditions under the CSAPR + BART-elsewhere case and the Nationwide BART case. The CSAPR + BART-elsewhere scenario passed this prong of the test based on the fact that, on average, modeled visibility improvement at the affected Class I areas was greater under the CSAPR + BART-elsewhere scenario than under the Nationwide BART scenario on both the 20 percent best and the 20 percent worst visibility days.

B. Impact on 2012 Analytic Demonstration of Actions Responding to the Remand of CSAPR Phase 2 Budgets

As discussed in section II.A above, although in *EME Homer City II* the D.C. Circuit remanded the CSAPR Phase 2 SO_2 budgets for four states and the CSAPR Phase 2 ozone-season NO_X budgets for eleven states, the EPA expects that with regard to most of these states the remand will result in no material change to the scope of CSAPR coverage. In the case of the remanded Phase 2 SO_2 budgets for Alabama, Georgia, and South Carolina, the states are expected to continue to ensure that their EGUs comply with comparably stringent CSAPR SO_2 and annual NO_X requirements through SIP revisions. In the case of the remanded Phase 2 ozone-season NO_X budgets, eight of the states with remanded budgets (including Texas) will continue to be subject to CSAPR to address ozone transport obligations with regard to the more stringent 2008 ozone NAAQS, and North Carolina and South Carolina, although no longer covered by CSAPR to address ozone transport obligations, will continue to be subject to CSAPR annual NO_X requirements in order to address their $PM_{2.5}$ transport obligations. In considering the potential impact of the remand of Phase 2 budgets on the 2012 CSAPR-Better-than-BART analytic demonstration, the EPA therefore believes that only two changes have potential relevance: The withdrawal of the FIP provisions subjecting Florida EGUs to CSAPR ozone-season NO_X requirements that has already been finalized, and the withdrawal of FIP provisions subjecting Texas EGUs to CSAPR SO_2 and annual NO_X requirements that is proposed in this action.

With regard to the change in CSAPR requirements for Florida EGUs, the EPA believes that the change would have no material impact on the 2012 analytic demonstration. Because Florida EGUs are no longer subject to any CSAPR requirements for NO_X emissions during Phase 2, Florida is no longer eligible to rely on CSAPR participation as a NO_X BART alternative.[55] If this information had been available at the time of the 2012 CSAPR-Better-than-BART analytic demonstration, the treatment of Florida EGUs in the base case and in the Nationwide BART scenario would not have changed, but in the CSAPR + BART-elsewhere scenario Florida EGUs would have been treated as subject to NO_X BART instead of being treated as subject to CSAPR ozone-season NO_X requirements. The Nationwide BART scenario already includes projections of the annual NO_X emissions from Florida EGUs under NO_X BART. The difference between the projected annual NO_X emissions of Florida EGUs in these two scenarios is only 5,300 tons, which represents an increase of approximately seven percent of the total annual NO_X emissions from Florida EGUs and approximately three tenths of one percent of the total annual NO_X emissions from EGUs in all modeled states in the CSAPR + BART-elsewhere scenario.[56] Consistent with the sensitivity analysis supporting the 2012 analytic demonstration that showed the dominance of sulfate impacts on visibility (especially in the South), small increases in Florida NO_X emissions are expected to have a negligible impact on visibility impairment in nearby Class I areas. The EPA believes that this relatively small increase in NO_X emissions in the CSAPR + BART-elsewhere case would have been too small to cause any change in the results of either prong of the two-pronged CSAPR-Better-than-BART test.

With regard to the changes in CSAPR requirements for Texas EGUs, the EPA believes that the changes would have no adverse impact on the 2012 analytic demonstration. Following withdrawal of the FIP provisions as proposed, Texas EGUs would no longer be subject to CSAPR requirements for SO_2 emissions and Texas would therefore be ineligible to rely on CSAPR as an SO_2 BART alternative. Texas EGUs would also no longer be subject to CSAPR requirements for annual NO_X emissions, but because the EGUs would continue to be subject to CSAPR requirements for ozone-season NO_X emissions, Texas would remain eligible to rely on CSAPR as a NO_X BART alternative.[57] If this information had been available at the time of the 2012 CSAPR-Better-than-BART demonstration, the treatment of Texas EGUs in the base case and in the Nationwide BART case would not have changed, but in the CSAPR + BART-elsewhere case Texas EGUs would have been treated as subject to SO_2 BART instead of being treated as subject to CSAPR SO_2 requirements. For NO_X, Texas EGUs would have been treated as being subject to CSAPR requirements for ozone-season NO_X emissions only instead of being treated as subject to CSAPR requirements for both ozone-season and annual NO_X emissions.

The Nationwide BART scenario already includes projections of the SO_2 emissions from Texas EGUs under BART. Some of the CSAPR states are projected to have lower emissions for a given pollutant in the CSAPR + BART-elsewhere scenario compared to the Nationwide BART scenario. This occurs in CSAPR states where the majority of the EGUs are not BART-eligible and/or where there were many EGUs with available cost-effective controls (at the time of the analysis for the CSAPR rulemaking). However, in other CSAPR states, the presumptive BART limits lead to estimated emissions for a given pollutant that are lower than what was

[55] The EPA has already approved the incorporation into Florida's SIP of determinations regarding source-specific NO_X BART. 77 FR 71111, 71113–14 (November 29, 2012); 78 FR 53250, 53267 (August 29, 2013).

[56] *See* the 2011 CSAPR/BART Technical Support Document, *supra* note 46, at table 2–5. The projected amounts of annual NO_X emissions from Florida EGUs are 81,000 tons in the Nationwide BART scenario and 75,700 tons in the CSAPR + BART-elsewhere scenario. The difference between these amounts is 5,300 tons. The quotient of 5,300 divided by 81,000 is 6.5%. The total projected amount of annual NO_X emissions from all states in the table in the CSAPR + BART-elsewhere scenario is 1,755,900 tons (1,217,500 + 538,400). The quotient of 5,300 divided by 1,755,900 is 0.3%.

[57] *See* 40 CFR 51.308(e)(4); *see also supra* note 7.

projected in the CSAPR + BART-elsewhere scenario. This can occur in CSAPR states that have numerous BART-eligible EGUs. In the case of Texas, the projected SO_2 emissions from affected EGUs in the modeled Nationwide BART scenario (139,300 tons per year) are considerably lower than the projected SO_2 emissions from the affected EGUs in the CSAPR + BART-elsewhere scenario (266,600 tons per year as modeled, and up to approximately 317,100 tons, as addressed in the 2012 CSAPR/BART sensitivity analysis memo).[58] Treating Texas EGUs in the CSAPR + BART-elsewhere scenario as subject to SO_2 BART instead of CSAPR SO_2 requirements would therefore have reduced projected SO_2 emissions by between 127,300 tons and approximately 177,800 tons in this scenario, thereby improving projected air quality in this scenario relative to projected air quality in both the Nationwide BART scenario and the base case scenario (in which the projected SO_2 emissions from Texas EGUs would not change).[59] At the lower end of this range, a reduction in SO_2 emissions of 127,300 tons would represent a reduction of over four percent of the total SO_2 emissions from EGUs in all modeled states in the CSAPR + BART-elsewhere scenario.[60] The EPA has previously observed that the visibility improvements from CSAPR relative to BART are primarily attributable to the greater reductions in SO_2 emissions from CSAPR across the overall modeled region in the CSAPR + BART-elsewhere scenario relative to the Nationwide BART scenario.[61] In the 2012 CSAPR-Better-than-BART analytic demonstration as relied on for purposes of the CSAPR-Better-than-BART rule, in which Texas SO_2 emissions for the CSAPR + BART-elsewhere scenario were represented at their higher projected CSAPR levels instead of at their lower projected BART levels, the difference in SO_2 emission reductions for the overall modeled region between the CSAPR + BART-elsewhere scenario and the Nationwide BART scenario was approximately 773,000 tons after accounting for the increases in CSAPR SO_2 budgets promulgated after the CSAPR final rule.[62] An additional SO_2 reduction of 127,300 tons or more in the CSAPR + BART-elsewhere scenario—the result of revising this scenario to represent Texas EGUs as subject to SO_2 BART requirements instead of CSAPR SO_2 requirements—would increase this 773,000 ton differential, which already favors implementation of CSAPR relative to BART, by more than fifteen percent.

The modeling performed for the 2012 analytic demonstration does not include projections of NO_X emissions from Texas EGUs in a scenario where the EGUs are assumed to be subject to CSAPR requirements for ozone-season NO_X but not annual NO_X emissions. However, in the base case used for the analytic demonstration—*i.e.,* without any NOx requirements from either CSAPR or BART—the projected annual NO_X emissions from Texas EGUs were only 2,600 tons higher than the annual NO_X emissions projected for the CSAPR + BART-elsewhere case in which it was assumed that the EGUs were subject to CSAPR requirements for both ozone-season and annual NO_X emissions.[63] The EPA believes this information indicates that if Texas EGUs had been modeled as subject to CSAPR requirements for ozone-season NO_X but not annual NO_X emissions, the projected NO_X emissions would likely have been at most a few thousand tons higher than the emissions already modeled in the CSAPR + BART-elsewhere scenario. An increase of 2,600 tons—that is, the full difference between the projected annual NO_X emissions from Texas EGUs under the CSAPR + BART-elsewhere scenario and a case with no CSAPR (or BART) NO_X requirements at all—would represent approximately two percent of the total annual NO_X emissions from Texas EGUs and less than two tenths of one percent of the total annual NO_X emissions from EGUs in all modeled states in the CSAPR + BART-elsewhere scenario.[64] Consistent with the sensitivity analysis supporting the 2012 analytic demonstration that showed the dominance of sulfate impacts on visibility (especially in the South), small increases in Texas NO_X emissions are expected to have a negligible impact on visibility impairment in nearby Class I areas. The EPA believes that this relatively small increase in NO_X emissions in the CSAPR + BART-elsewhere case would have been too small to cause any change in the results of either prong of the two-pronged CSAPR-Better-than-BART test.

In summary, if the information regarding the remanded CSAPR Phase 2 SO_2 budget for Texas and the consequent proposed withdrawal of FIP requirements for Texas EGUs had been available at the time of the 2012 CSAPR-Better-than-BART analytic demonstration, the EPA believes that the CSAPR + BART-elsewhere scenario likely would have reflected SO_2 emissions from Texas EGUs that would have been 127,300 or more tons per year lower than the emissions that were used instead, and likely would have reflected annual NO_X emissions from Texas EGUs that would have been at most a few thousand tons per year higher than the emissions that were used instead. Given the greater importance of SO_2 emissions relative to NO_X emissions in the 2012 analytic comparison, as noted above, and given that emissions would not have changed in the Nationwide BART or base case scenarios, it is a logical conclusion that the modeled visibility improvement in the CSAPR + BART-elsewhere scenario would have been even larger relative to the other scenarios than what was modeled in the 2012 analytic demonstration as reflected in the CSAPR-Better-than-BART rule. There is therefore no need to do any new modeling or more complicated sensitivity analysis. The lower SO_2 emissions in Texas would clearly have led to more visibility improvement on the best and worst visibility days in the nearby Class I areas.[65] Since the ''original'' CSAPR + BART-elsewhere scenario passed both prongs of the better-than-BART test (compared to the

[58] For the projected annual SO_2 emissions from Texas EGUs for all scenarios, see the 2011 CSAPR/BART Technical Support Document, *supra* note 46, at table 2–4. As discussed in section V.A above, certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo, *supra* note 53). The increase in the Texas SO_2 budget was 50,517 tons which, when added to the Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO_2 emissions from Texas EGUs of approximately 317,100 tons.

[59] The difference between 266,600 and 139,300 is 127,300. The difference between 317,100 and 139,300 is 177,800.

[60] The total projected amount of annual SO_2 emissions from all states in the table in the CSAPR + BART-elsewhere scenario is 2,918,500 tons (2,416,900 + 501,600). *See* the 2011 CSAPR/BART Technical Support Document, *supra* note 46, at table 2–4. The quotient of 127,300 divided by 2,918,500 is 4.3%.

[61] *See* the 2012 CSAPR/BART sensitivity analysis memo, *supra* note 53, at 1–2.

[62] *Id.*

[63] *See* the 2011 CSAPR/BART Technical Support Document, *supra* note 46, at table 2–5. The projected amounts of annual NO_X emissions from Texas EGUs are 142,100 tons in the base case scenario and 139,500 tons in the CSAPR + BART-elsewhere scenario. The difference between these amounts is 2,600 tons.

[64] The quotient of 2,600 divided by 139,500 is 1.9%. The total projected amount of annual NO_X emissions from all states in the CSAPR + BART-elsewhere scenario is 1,755,900 tons. *See supra* note 56. The quotient of 2,600 divided by 1,755,900 is 0.15%.

[65] As documented in the 2012 CSAPR/BART sensitivity analysis memo, *supra* note 53, sulfate is the main constituent contributing to visibility impairment at the Class I areas affected by Texas' emissions, making Texas' SO_2 emissions the dominant contributor to visibility impairment in these areas.

Nationwide BART scenario and the base case scenario), a modified CSAPR + BART-elsewhere scenario without Texas in the CSAPR region would without question also have passed both prongs of the better-than-BART test. In fact, if the modeling analysis had reflected the withdrawal of FIP provisions for Texas EGUs proposed in this action, the EPA expects that CSAPR implementation would have passed the better-than-BART test even more easily, again supporting the use of CSAPR implementation as a BART alternative for all states whose EGUs participate in the CSAPR trading programs.

The EPA requests comment on this discussion and the sensitivity analysis showing that the 2012 analytic demonstration supporting the conclusion that CSAPR participation qualifies as a BART alternative would not be adversely affected by modifying the assumptions to reflect the actions that have been or are expected to be taken in response to the D.C. Circuit's remand of CSAPR Phase 2 budgets, including the proposed withdrawal of FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 and annual NO_X trading programs.

VI. 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 not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. The withdrawal of the FIP provisions proposed in this action will eliminate monitoring, recordkeeping, and reporting requirements for Texas sources under the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program. However, this action will cause no material change in information collection burden related to NO_X because all of the sources will continue to be subject to very similar NOx monitoring and reporting requirements under the CSAPR NO_X Ozone Season Group 2 Trading Program and/or the Acid Rain Program. Further, for most of the sources, this action will also cause no change in information collection burden related to SO_2 because the same SO_2 monitoring and reporting requirements will continue to apply to the sources under the Acid Rain Program. Approximately eight Texas sources currently reporting under CSAPR include units that are not subject to the Acid Rain Program and therefore will no longer be required to continuously monitor and report SO_2 emissions to the EPA, but these units combust only gaseous or liquid fuels and currently use default values or periodic sampling instead of continuous emission monitoring systems to measure SO_2 concentrations. Consequently, the EPA expects this action to cause little change in information collection burden related to SO_2.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action withdraws existing regulatory requirements for some entities and does not impose new requirements on any entity. We have therefore concluded that this action will either relieve or have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48208, 48346 (August 8, 2011).

G. 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 simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

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

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

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply eliminates certain federal regulatory requirements that the

D.C. Circuit has held invalid. Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347–52 (August 8, 2011).

List of Subjects in 40 CFR Part 52

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

Dated: November 3, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, part 52 of chapter I of title 40 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 2. Section 52.38 is amended by revising paragraph (a)(2), paragraph (a)(4) introductory text, paragraph (a)(5) introductory text, and paragraph (a)(6) to read as follows:

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

(a) * * *

(2)(i) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

(ii) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

* * * * *

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

* * * * *

(5) Notwithstanding the provisions of paragraph (a)(1) of this section, a State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Annual Trading Program set forth in §§ 97.402 through 97.435 of this chapter, except that the SIP revision:

* * * * *

(6) Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section, the provisions of paragraph (a)(2)(i) of this section will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

* * * * *

■ 3. Section 52.39 is amended by revising paragraph (c), paragraph (h) introductory text, paragraph (i) introductory text, and paragraph (j) to read as follows:

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

* * * * *

(c)(1) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Kansas, Minnesota, Nebraska, and South Carolina.

(2) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

* * * * *

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

* * * * *

(i) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c)(1), (g), and (h) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR SO_2 Group 2 Trading Program set forth in §§ 97.702 through 97.735 of this chapter, except that the SIP revision:

* * * * *

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

otherwise in the Administrator's approval of the SIP revision.

* * * * *

Subpart SS—Texas

■ 4. Section 52.2283 is amended by revising paragraph (c)(1) and removing and reserving paragraph (c)(2) to read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Annual Trading Program in subpart AAAAA of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) [Reserved]

* * * * *

■ 5. Section 52.2284 is amended by revising paragraph (c)(1) and removing and reserving paragraph (c)(2) to read as follows:

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

* * * * *

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR SO_2 Group 2 Trading Program in subpart DDDDD of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) [Reserved]

[FR Doc. 2016–27197 Filed 11–9–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[EPA–HQ–OAR–2016–0041; FRL–9955–04–OAR]

RIN 2060–AS66

Public Hearing for the Renewables Enhancement and Growth Support Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public hearing to be held in Chicago, Illinois on December 6, 2016, on its proposal for the ''Renewables Enhancement and Growth Support (REGS) Rule.'' The public can view the proposal at *https://www.epa.gov/renewable-fuel-standard-program/proposed-renewables-enhancement-and-growth-support-regs-rule.* Comments submitted at the public hearing will contribute to the REGS Rule proposal that the EPA will publish at a later date in the **Federal Register**.

DATES: The public hearing will be held on December 6, 2016, at the location noted below under **ADDRESSES**. The hearing will begin at 9:00 a.m. Central Standard Time and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by November 22, 2016. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The hearing will be held at the following location: Palmer House Hilton Hotel, 17 East Monroe Street, Chicago, IL 60603; telephone number: (312) 726–7500. A complete set of documents related to the proposal will be available for public inspection through the Federal eRulemaking Portal: *http://www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2016–0041. Documents can also be viewed at the EPA Docket Center, located at William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; email address: *RFS_Hearing@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has proposed amendments to update both its Renewable Fuel Standard (RFS) and other fuels regulations in the Renewables Enhancement and Growth Support (REGS) Rule to reflect changes in the marketplace and to promote the growing use of both ethanol fuels (conventional and advanced) and non-ethanol advanced and cellulosic biofuels. In addition, the REGS rule includes a number of other regulatory changes, clarifications, and technical corrections to the RFS program and other fuels regulations. The proposal for the REGS rule will be published separately in the **Federal Register**. The pre-publication version can be found at *https://www.epa.gov/renewable-fuel-standard-program/proposed-renewables-enhancement-and-growth-support-regs-rule.*

Public Hearing: The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which can be found at *https://www.epa.gov/renewable-fuel-standard-program/proposed-renewables-enhancement-and-growth-support-regs-rule*). The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period, as specified in the notice of proposed rulemaking.

How can I get copies of this document, the proposed rule, and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0041. The EPA has also developed a Web site for the Renewables Enhancement and Growth Support (REGS) rule, including the proposal, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: October 27, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–26965 Filed 11–9–16; 8:45 am]

BILLING CODE 6560–50–P