

applicability, a rate cannot be based on mailer-specific data, such as historical mailer volume. Second, the Commission proposes to amend § 3010.23(e)(2) to add an additional criterion for a rate incentive to be eligible for inclusion in a percentage change in rates calculation at discounted prices—the rate incentive must be made available to all mailers equally on the same terms and conditions.

The Commission’s basis for proposing these revisions is twofold. The Commission is concerned that interpreting “rate of general applicability” to permit volume thresholds based on historical volume data would contravene the policy reasons underlying the general applicability requirement, because, as the Commission has found before, “volume sent by a mailer in a previous year is not a characteristic of the mail to which rates under [an] incentive program apply[.]” due to the fact that past behavior by mailers bears no relationship to mail being sent in the present. See Order No. 2086 at 15. The Commission is equally concerned about the fairness of permitting mailer-specific thresholds for determining eligibility for market dominant rate incentives. Where a rate incentive is not made available to all mailers on the same terms and conditions, the potential exists for non-qualifying mailers to be forced to subsidize the rate incentives received by qualifying mailers.

The third revision the Commission is proposing is to amend § 3010.12(b)(9) to add additional requirements intended to ensure that the Postal Service provides sufficient information at the outset of a market dominant rate adjustment proceeding to permit the Commission and stakeholders to verify that all rate incentives included in a percentage change in rates calculation comply with the definition of “rates of general applicability” and are made available to all mailers equally on the same terms and conditions.

**III. Proposed Rule**

*Proposed § 3010.1(g).* Proposed § 3010.1(g) is revised to state clearly that the definition of “rate of general applicability” within the context of a market dominant rate adjustment proceeding means a rate incentive that is not based on mailer-specific data, such as historical volume data.

*Proposed § 3010.12(b)(9).* Proposed § 3010.12(b)(9) is revised to state clearly what information the Postal Service must file to support its claim that a rate incentive meets the necessary criteria to be included in a percentage change in rates calculation.

*Proposed § 3010.23(e)(2)(iv).* Proposed § 3010.23(e)(2)(iv) is added to make it a criterion for a market dominant rate incentive to be included in a percentage change in rates calculation that the incentive be available to all mailers equally on the same terms and conditions.

**List of Subjects in 39 CFR Part 3010**

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of the Federal Regulations as follows:

**PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS**

■ 1. The authority citation for part 3010 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3622.

■ 2. Amend § 3010.1 by revising paragraph (g) to read as follows:

**§ 3010.1 Definitions.**

(g) Rate of general applicability means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies, including the volume of mail sent by a mailer in a past year or years. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

■ 3. Amend § 3010.12 by revising paragraph (b)(9) to read as follows:

**§ 3010.12 Contents of notice of rate adjustment.**

(b) \* \* \*  
(9) For a notice that includes a rate incentive:

(i) Whether the rate incentive is being treated under § 3010.23(e)(2) or under § 3010.23(e)(1) and § 3010.24.

(ii) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3010.23(e)(2), whether the rate incentive is available to all mailers equally on the same terms and conditions.

(iii) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in

rates under § 3010.23(e)(2), sufficient information to demonstrate that the rate incentive is a rate of general applicability, which at a minimum includes: the terms and conditions of the rate incentive; the factors that determine eligibility for the rate incentive; a statement that affirms that the rate incentive will not benefit a single mailer; and a statement that affirms that the rate incentive is not only available upon the written agreement of both the Postal Service and a mailer, or group of mailers, or a foreign postal operator.

■ 4. Amend § 3010.23 by revising paragraph (e)(2) to read as follows:

**§ 3010.23 Calculation of percentage change in rates.**

(e) \* \* \*  
(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can easily be translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior);

(iii) The rate incentive is a rate of general applicability; and

(iv) The rate incentive is made available to all mailers equally on the same terms and conditions.

By the Commission.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2020-03428 Filed 2-20-20; 8:45 am]

**BILLING CODE 7710-FW-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

[EPA-HQ-OAR-2018-0633; FRL-10005-41-OAR]

**RIN 2060-AT80**

**Revisions to Appendix P to 40 CFR Part 51, Concerning Minimum Emission Reporting Requirements in SIPs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to update a

regulation, Appendix P to 40 CFR part 51 (Appendix P), that specifies what State Implementation Plans (SIPs) must require of sources among four categories with respect to continuous emission monitoring, recording, and reporting. Those four Appendix P source categories are: Fossil fuel-fired steam generators; fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries; sulfuric acid plants; and nitric acid plants. In particular, proposed amendments to Appendix P would revise the minimum frequency for submitting reports of excess emissions from “each calendar quarter” to “twice per year at 6-month intervals.” As a result, states may, in their SIPs, establish a semiannual reporting frequency for excess emissions at affected sources that aligns with what the EPA has generally established as the reporting frequency applicable to the Appendix P source categories under more recently updated regulations, such as New Source Performance Standards (NSPS) under 40 CFR part 60. Proposed amendments also include correction of an erroneous cross-reference in Appendix P.

#### **DATES:**

*Comments:* Written comments must be received on or before March 23, 2020. *Public hearings.* If anyone contacts us requesting a public hearing on or before March 9, 2020, we will hold a public hearing. Additional information about the hearing, if one is requested, will be published in a subsequent **Federal Register** document. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

*Information collection request:* Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before March 23, 2020.

**ADDRESSES:** *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2018-0633, at <https://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 document 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 <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this proposed rule or on the Information Collection Request (ICR), contact Ms. Lisa Sutton, U.S. EPA, Office of Air Quality Planning and Standards, State and Local Programs Group (C539-01), Research Triangle Park, NC 27711, telephone number (919) 541-3450, email address: [sutton.lisa@epa.gov](mailto:sutton.lisa@epa.gov). For information on the public hearing, contact Ms. Pam Long, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504-01), Research Triangle Park, NC 27711, telephone number (919) 541-0641, email address: [long.pam@epa.gov](mailto:long.pam@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this action apply to me?*

Entities potentially affected directly by this action include states, United States (U.S.) territories, local authorities and eligible tribes that are currently administering, or may in the future administer, EPA-approved implementation plans (collectively “states”).<sup>1</sup> Entities potentially affected indirectly by this action are sources categorized as fossil fuel-fired steam generators, fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries, sulfuric acid plants, or nitric acid plants. For convenience, the EPA’s reference to “affected sources” in this rulemaking generally refers to sources affected by SIP requirements, *i.e.*, those sources to which a SIP’s Appendix P-specified monitoring requirements actually apply. While all sources among the Appendix P source categories (when not already excepted in Appendix P

<sup>1</sup> The EPA respects the unique relationship between the U.S. government and tribal authorities and acknowledges that tribal concerns are not interchangeable with state concerns. Under the CAA and EPA regulations, a tribe may, but is not required to, apply for eligibility to have a tribal implementation plan (TIP). For convenience, the EPA refers to either “states” or “air agencies” in this rulemaking when meaning to refer in general to states, the District of Columbia, U.S. territories, local air permitting authorities and eligible tribes that are currently administering, or may in the future administer, EPA-approved implementation plans.

itself) are *potentially* affected by such requirements, it is within the state’s discretion to grant an exemption in its SIP from applicability of the Appendix P-specified monitoring requirements for certain sources. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

###### *B. What should I consider as I prepare my comments for the EPA?*

When submitting comments, remember to:

- Identify the rulemaking docket by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used to support your comment.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

*Submitting CBI.* Do not submit information containing CBI to the EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA’s electronic

public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2018-0633.

*C. How can I find information about a possible hearing?*

To request a public hearing or information pertaining to a public hearing regarding this document, please contact Ms. Pam Long, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504-01), Research Triangle Park, NC 27711, telephone number (919) 541-0641, email address: [long.pam@epa.gov](mailto:long.pam@epa.gov) on or before March 9, 2020. Additional information about the hearing, if one is requested, will be published in a subsequent **Federal Register** document.

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

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <https://www.epa.gov/air-quality-implementation-plans/develop-air-quality-sip#guidance>.

*E. How is this notice of proposed rulemaking organized?*

The information presented in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. What should I consider as I prepare my comments for the EPA?
  - C. How can I find information about a possible hearing?
  - D. Where can I get a copy of this document and other related information?
  - E. How is this notice of proposed rulemaking organized?
- II. Overview of Proposed Action
  - A. What action is the Agency proposing?
  - B. What is the Agency's authority for proposing this action?
- III. Historical and Regulatory Background for Appendix P
  - A. State Implementation Plans and the EPA's Regulations at 40 CFR Part 51
  - B. Part 51 Amended To Require Continuous Emission Monitoring
- IV. Rationale for Updating Appendix P
  - A. Proposed Action Comports With the EPA's Burden Reduction Rule of 1999
  - B. States Urge the EPA To Reduce Reporting Frequency for Appendix P Source Categories
- V. Environmental Justice Considerations
- VI. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
- D. Regulatory Flexibility Act (RFA)
- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- VII. Statutory Authority

## II. Overview of Proposed Action

### A. What action is the Agency proposing?

The EPA is proposing amendments to update the data reporting requirements specified for SIPs under Appendix P to 40 CFR part 51. Appendix P, which the EPA promulgated in 1975, sets forth certain minimum requirements for continuous emission monitoring that each SIP must include in order to be approved under the provisions of 40 CFR 51.214. *See* 40 FR 46240 (October 6, 1975).

The EPA proposes to revise the current specification that sources among the four Appendix P source categories must report excess emissions at a frequency of no less than every calendar quarter, by changing the minimum frequency to semiannually. For example, the reference to "each calendar quarter" in paragraph 4.1 of Appendix P would be removed and replaced with a reference to "twice per year at 6-month intervals." As a result, states would be allowed to establish, in their SIPs, a reporting frequency for affected sources under Appendix P that aligns with the reporting frequency that the EPA has generally established under more recently updated programs applicable to sources among the four Appendix P source categories, such as NSPS. As described in Section III.B of this document, the EPA has generally moved to a semiannual reporting frequency specification for sources regulated under its regulations pursuant to the Clean Air Act (CAA), *e.g.*, in NSPS (40 CFR part 60) and National Emission Standards for Hazardous Air

Pollutants (NESHAP) (40 CFR parts 61 and 63).<sup>2</sup> A semiannual minimum reporting frequency under Appendix P would also align with the semiannual reporting frequency required of sources through the EPA's regulations for title V operating permits (40 CFR parts 70 and 71).<sup>3</sup> Notwithstanding these proposed revisions to Appendix P, a source that is subject to other excess emission reporting requirements (*e.g.*, under 40 CFR parts 60, 61, or 63) would be required to comply with the applicable provisions of those rules.

The EPA emphasizes that the proposed amendments to Appendix P, if finalized as proposed, would not require states to adopt these particular changes (by revising their SIPs). When proposing in 1974 to add Appendix P to 40 CFR part 51, the EPA stressed that Appendix P set forth only minimum requirements and recognized that in keeping with the basic framework of SIPs, states were allowed, even encouraged, to develop procedures even more comprehensive than those in Appendix P.<sup>4</sup> Likewise, upon promulgating Appendix P in 1975, the EPA stated that while minimum requirements were being established, states "may, as they deem appropriate, expand these requirements."<sup>5</sup> Thus, although the relaxation in minimum reporting frequency specified for SIPs under Appendix P being proposed would allow a state in turn to require semiannual reporting of sources among the Appendix P source categories, it would not obligate a state to adopt requirements for semiannual reporting in its SIP if the state chooses to retain requirements beyond the minimum (*e.g.*, quarterly reporting requirements for Appendix P source categories).

An additional amendment proposed in this action would revise one cross-reference under Appendix P so that it refers to the appropriate section of 40 CFR part 51. In accordance with the EPA's regulations for SIPs concerning continuous emission monitoring, each SIP must meet certain minimum requirements, including those specified in Appendix P. The continuous

<sup>2</sup> "Recordkeeping and Reporting Burden Reduction, Final amendments," 64 FR 7457 (February 12, 1999).

<sup>3</sup> The title V permit shall require submittal of reports of any required monitoring at least every 6 months, and all instances of deviations from permit requirements must be clearly identified in such reports. *See* 40 CFR 70.6(a)(3)(iii)(A) and 40 CFR 71.6(a)(3)(iii)(A).

<sup>4</sup> "Requirements for the Preparation, Adoption and Submittal of Implementation Plans: Emission Monitoring of Stationary Sources; Proposed rules," 39 FR 32871 (September 11, 1974). *See* 32872/3.

<sup>5</sup> "Part 51—Requirements for the Preparation, Adoption and Submittal of Implementation Plans: Emission Monitoring of Stationary Sources," 40 FR 46240 (October 6, 1975). *See* 46246/3.

emission monitoring regulations of 40 CFR part 51 were moved from § 51.19(e) to § 51.214 as part of a 1986 rule through which the EPA significantly restructured and consolidated its regulations for the development of SIPs.<sup>6</sup> In the notice of final rulemaking for that 1986 rule, several cross-references under Appendix P were revised. The EPA acknowledges that the cross-reference in Appendix P under section 1.0 (which concerns continuous emission monitoring requirements) was changed from § 51.19(e) to § 51.165(b) in error, when the intent was to change it to § 51.214. The EPA now proposes to revise section 1.0 of Appendix P so that it correctly refers to the continuous emission monitoring regulations at § 51.214.

#### *B. What is the Agency's authority for proposing this action?*

This document is being developed under the authority of sections 110(a)(2)(F) and 301(a) of the CAA.

### **III. Historical and Regulatory Background for Appendix P**

#### *A. State Implementation Plans and the EPA's Regulations at 40 CFR Part 51*

The SIP is a state's plan identifying how the state will meet its CAA requirements, such as to attain and maintain the National Ambient Air Quality Standards (NAAQS). Pursuant to section 110 of the CAA, each state is required to submit a SIP for EPA approval, and the EPA is required to evaluate and either approve or disapprove the state's submission. The SIP (including revisions over time) contains control measures and strategies developed through a public process and formally adopted by the state. The elements of a SIP are prescribed in particular under section 110 and Part D of the CAA. Of particular relevance to this proposed rulemaking, CAA section 110(a)(2)(F) governs requirements associated with stationary source monitoring and reporting in the context of SIPs.

Pursuant to CAA section 110, the EPA established procedural requirements applicable to all states concerning the preparation, adoption, and submission of SIPs and SIP revisions. These regulations, initially promulgated in 1971, comprise 40 CFR part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." Like the SIPs

themselves, these regulations are periodically revised.

#### *B. Part 51 Amended To Require Continuous Emission Monitoring*

The EPA in 1974 proposed to amend its SIP preparation regulations under 40 CFR part 51 to require that SIPs contain legally enforceable procedures mandating owners or operators of stationary sources to install equipment to monitor pollutant emissions on a continuous basis and to report the data obtained.<sup>7</sup> As was explained in the 1974 notice of proposed rulemaking, the regulations already required states to have the legal authority to require such monitoring and recording.<sup>8</sup> However, at the time that the EPA's SIP preparation regulations were originally published, "[t]he Agency believed that the state-of-the-art was such that it was not prudent to require existing sources to install [continuous monitoring] devices."<sup>9</sup> The agency explained that, for certain sources, "general specifications for accuracy, reliability and durability can be established for continuous emission monitors . . . ." <sup>10</sup> Accordingly, the agency proposed to amend 40 CFR part 51 by adding a new requirement that would "require States to revise their implementation plans to require sources to install monitoring instruments and to report the resulting data to the appropriate State Agency."<sup>11</sup>

In choosing the types of sources and pollutants listed in Appendix P and, thus, subject to the proposed minimum requirements for continuous emission monitoring specified for SIPs, the EPA selected four source categories that would be covered by continuous emission monitoring requirements and performance testing methods simultaneously proposed under NSPS regulations pursuant to section 111 of the CAA (*i.e.*, under Part 60).<sup>12</sup> The EPA even noted in the Appendix P proposal that the SIP rulemaking was very closely connected with the NSPS rulemaking. The EPA urged states and other affected parties to consider the companion NSPS proposal as part of the Appendix P proposal and to direct comments to the relevant portions of both proposals.<sup>13</sup>

<sup>7</sup> "Requirements for the Preparation, Adoption and Submittal of Implementation Plans: Emission Monitoring of Stationary Sources; Proposed rules," 39 FR 32871 (September 11, 1974). *See* 32871/3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 39 FR 32871 at 32872; *see also* "Standards of Performance for New Stationary Sources: Emission Monitoring Requirements and Performance Testing Methods; Proposed rules," 39 FR 32852 (September 11, 1974).

<sup>13</sup> 39 FR 32871 at 32872/2.

In 1975, the EPA promulgated Appendix P on the same day it promulgated the NSPS monitoring and performance requirements under 40 CFR part 60.<sup>14</sup> In the final amendments to 40 CFR part 51, the EPA expanded 40 CFR 51.19 (now 40 CFR 51.214) to require states to revise their SIPs to include legally enforceable procedures requiring certain specified categories of existing stationary sources to monitor emissions on a continuous basis. The agency explained that requiring "a sound program of continuous emission monitoring and reporting" would more fully implement CAA sections 110(a)(2)(F)(ii) and (iii).<sup>15</sup>

Section 51.19(e)(4) (now § 51.214(e)) in 40 CFR specifies such procedures to require the source owner or operator to submit information relating to emissions and operation of the emission monitors to the state to the extent described in Appendix P as frequently as or more frequently than described therein.<sup>16</sup> With respect to reporting requirements, Appendix P specifies under paragraph 4.1 that the SIP "shall require owners or operators of facilities required to install continuous monitoring systems to submit a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known."<sup>17</sup> At the time of promulgation in 1975, this specification in Appendix P of quarterly reporting as the minimum frequency was by design aligned with the quarterly reporting frequency generally specified for new sources under Part 60. This "report of excess emissions," like the corollary "excess emissions and monitoring systems performance report" specified under 40 CFR part 60 (*see* § 60.7(c)), should be submitted by the owner or operator whether or not excess emissions occurred within the reporting period (*see* Appendix P, paragraph 4.5).

Each state is required to include all of the Appendix P-specified requirements in its SIP, including the monitoring requirements listed in Appendix P under section 1.1, "Applicability," for sources specified under Appendix P at a minimum.<sup>18</sup> However, section 1.2, "Exemptions," provides that a state may exempt certain sources from applicability of those monitoring requirements. When proposing in 1974 to amend the 40 CFR part 51 regulations

<sup>14</sup> "Part 60—Standards of Performance for New Stationary Sources," 40 FR 46250 (October 6, 1975).

<sup>15</sup> "Part 51—Requirements for the Preparation, Adoption and Submittal of Implementation Plans: Emission Monitoring of Stationary Sources," 40 FR 46240 (October 6, 1975).

<sup>16</sup> 40 FR 46240 at 46247/2.

<sup>17</sup> *Id.* at 46249/1.

<sup>18</sup> *Id.* at 46246/3.

<sup>6</sup> "Air Quality Implementation Plans; Restructuring SIP Preparation Regulations; Final rule," 51 FR 40656 (November 7, 1986). The changes to cross-references in Appendix P and Appendix S are described at 40675.

to include minimum requirements for continuous emission monitoring, the EPA noted that the 40 CFR part 51 amendments were not intended to necessarily apply to new sources, since the 40 CFR part 60 (NSPS) requirements would apply to those new sources.<sup>19</sup> Therefore, in accordance with Appendix P, paragraph 1.2.1, a state may choose to include in its SIP a provision to grant an exemption from the Appendix P-specified monitoring requirements for a source that is subject to an NSPS promulgated in 40 CFR part 60. Similarly, in accordance with paragraph 1.2.2, a state may choose to include in its SIP a provision to grant an exemption for a source that is not subject to an applicable emission standard of the approved SIP. As the EPA clarified in the 40 CFR part 51 amendments, Appendix P-specified continuous emission monitors “are not required for sources unless such sources are subject to an applicable emission limitation of an approved SIP.”<sup>20</sup> In addition, in accordance with paragraph 1.2.3, a state was allowed to include in its SIP a provision granting an exemption for certain affected sources that were scheduled for retirement within 5 years after inclusion of the Appendix P monitoring requirements in its SIP.

#### IV. Rationale for Updating Appendix P

##### A. Proposed Action Comports With the EPA’s Burden Reduction Rule of 1999

As of 1975, when the continuous emission monitoring specifications for SIPs under 40 CFR part 51 and for NSPS under 40 CFR part 60 were promulgated, sources affected under either set of regulations were required to submit continuous emission monitor reports of their excess emissions and other information on a quarterly basis. Over the next many years, the EPA expanded the types of sources to be regulated pursuant to CAA sections 111 (for NSPS) and 112 (for NESHAP), and those later regulations (*e.g.*, NSPS under 40 CFR part 60 and NESHAP under 40 CFR parts 61 and 63) increasingly allowed sources to submit such reports on a less frequent basis, semiannually or in some cases even annually. In the agency’s experience, semiannual reporting provides sufficiently timely information to ensure compliance and enable adequate enforcement of applicable requirements, while imposing less burden on the affected industry than would quarterly reporting. Thus, in 1999, the EPA promulgated a

Burden Reduction Rule,<sup>21</sup> which, among other revisions, revised the NSPS reporting frequency, with a few exceptions,<sup>22</sup> to semiannually for nearly all source categories. As a result, the reporting frequency requirements under NSPS regulations, including for the four Appendix P source categories, no longer aligned with the reporting requirements specified in Appendix P.

As rationale for the Burden Reduction Rule, the EPA noted at proposal that its most recent NSPS and NESHAP had moved almost exclusively to semiannual reporting as a standard approach.<sup>23</sup> Thus, also in the General Provisions for 40 CFR parts 60, 61, and 63, the Burden Reduction Rule changed the reporting frequency requirements, to conform them to recently promulgated NSPS and NESHAP regulations. The EPA estimated a 20-percent reduction in reporting burden on sources under a typical rule.<sup>24</sup>

As noted by the EPA in the Burden Reduction Rule,<sup>25</sup> and as recognized in Section II.A of this document, the EPA’s regulations for title V operating permits also specify semiannual reporting by sources.<sup>26</sup>

##### B. States Urge the EPA To Reduce Reporting Frequency for Appendix P Source Categories

With this proposed rulemaking, the EPA is seeking to reasonably resolve a longstanding inconsistency in its reporting requirements for certain categories of sources between (i) those specified as the minimum for Appendix

P source categories in the SIP context (under 40 CFR part 51) and (ii) those prescribed for similar sources through NSPS (under part 60) or NESHAP (under 40 CFR parts 61 and 63). The EPA acknowledges that two states in particular, South Carolina and Tennessee, have been urging the EPA to amend the Appendix P specification for reporting frequency. South Carolina and Tennessee each have sources among the Appendix P source categories that cannot be exempted from the Appendix P-specified monitoring requirements under any of the exemptions available under Appendix P section 1.2 (Exemptions). While such sources are subject to SIP emission limitations, they are not subject to any NSPS because they commenced operation before the applicability dates of those standards. States have argued that the rationale on which the EPA has relied to decrease the minimum reporting frequency over time for sources regulated under NSPS, for example, is the same rationale on which the EPA should rely to decrease the minimum reporting frequency that Appendix P specifies for 40 CFR part 51 sources. Materials submitted by South Carolina and Tennessee, including their general arguments in support of—and in advance of—such action, are available in the docket for this rulemaking. The EPA is including those materials in the docket because they serve to illustrate how the proposed amendments to Appendix P might manifest in a SIP.

#### V. Environmental Justice Considerations

A change in the specified minimum frequency with which affected sources must submit continuous monitoring system data reports, as a result of the proposed revisions to Appendix P, is not expected to result in any change in the pollutant emissions from any of the affected sources. Therefore, the EPA believes that this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

#### VI. Statutory and Executive Order Reviews

##### 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 was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

<sup>21</sup> “Recordkeeping and Reporting Burden Reduction, Final amendments,” 64 FR 7457 (February 12, 1999).

<sup>22</sup> For most source categories, the reporting requirements under NSPS and NESHAP General Provisions apply. However, a minority of the NSPS regulations do not adopt by reference the Part 60 General Provisions for reporting requirements, instead explicitly specifying requirements for the affected source category. Certain reporting requirements, for particular pollutants and particular source categories, were not revised in the Burden Reduction Rule. For example, for those electric utility steam generating units subject to NSPS subpart Da (which also fall under Appendix P’s “fossil fuel-fired steam generators” source category), the regulation continues even today to require that opacity levels in excess of the applicable opacity standard and the date of such excesses are to be submitted (reported) to the Administrator each calendar quarter; *see* 40 CFR 60.51Da(i).

<sup>23</sup> “Recordkeeping and Reporting Burden Reduction; Proposed revisions to rules and notice of public hearing,” 61 FR 47840 (September 11, 1996). *See* 61 FR 47844/2.

<sup>24</sup> *Id.*

<sup>25</sup> 64 FR 7457 at 7458/3.

<sup>26</sup> The title V permit shall require submittal of reports of any required monitoring at least every 6 months, and all instances of deviations from permit requirements must be clearly identified in such reports. *See* 40 CFR 70.6(a)(3)(iii)(A) and 40 CFR 71.6(a)(3)(iii)(A).

<sup>19</sup> 39 FR 32871 at 32872/2.

<sup>20</sup> 40 FR 46240 at 46246/2.

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

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2590.01. You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here.

The EPA is proposing to update a regulation, Appendix P to 40 CFR part 51, that specifies what SIPs must require of sources among four categories with respect to continuous emission monitoring, recording, and reporting. In particular, the proposed amendments to Appendix P would generally relax a “minimum reporting frequency” specification for SIPs from quarterly to semiannually. The subject rule would revise only the minimum requirement, and so the rule does not require that any state change the actual reporting frequency requirement in its SIP that applies to Appendix P sources. Therefore, to comply with the subject rule’s requirements, each state may choose to prepare and submit a SIP revision but is not required to do so, and so the information collection activities in this proposed rule are voluntary for the states as respondents. The EPA has determined that the requested information collection (SIP submissions) would not include any confidential information. In accordance with 40 CFR 51.116, “Data availability,” each state must retain and make available for public inspection all detailed data and calculations used in the preparation of its SIP and SIP revisions. The EPA has the responsibility and statutory authority under CAA section 110(a) to assure that the states, through their SIPs, meet the requirements of the CAA. The regulatory burden under the information collection is attributed to states’ preparation and submission of SIP revisions, a type of reporting burden. For purposes of estimating the paperwork burden, the EPA assumes that each of 56 entities, including states, the District of Columbia, and U.S. territories, would make a single SIP submission that includes an Appendix P-related provision within 3 years after the effective date of the rule, corresponding to the requested 3-year

collection period. There are no capital costs or operation and maintenance costs attributed to the proposed rule.

*Respondents/affected entities:* All states.

*Respondent’s obligation to respond:* Voluntary.

*Estimated number of respondents:* 56.

*Frequency of response:* One-time.

*Total estimated burden:* 3,080 hours per year (or 55 hours per respondent per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$191,200 per year (or \$3,414 per respondent per year), with no capital cost and no operation and maintenance cost.

The derivation of these estimates is described in greater detail in the Supporting Statement for the initial, rule-related ICR for “Revisions to Appendix P to 40 CFR part 51” that is included in the docket for this rulemaking.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the agency’s need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB’s Office of Information and Regulatory Affairs via email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov), Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than March 23, 2020. The EPA will respond to any ICR-related comments in the final rule.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. Any 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 this rule. This action will not impose any requirements on small entities. Instead, this action leaves to each state the choice as to whether to reflect in its SIP a reduction in

minimum reporting frequency specified for certain categories of stationary sources regulated under the CAA.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

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

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

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

*H. Executive Order 13045: Protection of Children From Environmental Health Risks 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 the reduction in minimum reporting frequency specified for certain categories of sources regulated under the CAA will have no effect on any obligation to comply with emission limitations in SIPs, and so it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action merely allows states the option to reflect in their SIPs a reduction in minimum reporting frequency specified for certain categories of stationary sources regulated under the CAA.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

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

This action merely allows states the option to reflect in their SIPs a reduction in minimum reporting frequency specified for certain categories of stationary sources regulated under the CAA, which will have no effect on any obligation to comply with emission limitations in SIPs.

**VII. Statutory Authority**

The statutory authority for this action is provided by CAA section 101 *et seq.* (42 U.S.C. 7401 *et seq.*).

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Opacity, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 7, 2020.

**Andrew R. Wheeler,**  
*Administrator.*

For the reasons stated in the preamble, 40 CFR part 51 is proposed to be amended as follows:

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

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

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

**APPENDIX P TO PART 51—MINIMUM EMISSION MONITORING REQUIREMENTS—[AMENDED]**

■ 2. In appendix P to part 51:

■ a. Paragraph 1.0 is amended by removing the reference to “40 CFR 51.165(b).” and adding in its place a reference to “40 CFR 51.214.”;

■ b. Paragraph 4.1 is amended by removing the words “each calendar quarter” and adding in their place the words “twice per year at 6-month intervals”;

■ c. Paragraph 4.6 is amended by removing the words “in the quarterly summaries, and” and adding in their place the words “as specified in paragraph 4.1 of this appendix and”;

■ d. Paragraph 5.2.3 is amended by removing the words “quarterly summary.” and adding in their place the words “reports submitted as specified in paragraph 4.1 of this appendix.”;

■ e. Paragraph 5.3.3 is amended by removing the words “quarterly summary.” and adding in their place the words “reports submitted as specified in paragraph 4.1 of this appendix.”

[FR Doc. 2020–03154 Filed 2–20–20; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R05–OAR–2018–0634; FRL–10005–33–Region 5]**

**Air Plan Approval; Indiana; Revisions to NO<sub>x</sub> SIP Call and CAIR Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve under the Clean Air Act (CAA) a request from the Indiana Department of Environmental Management to revise the Indiana State Implementation Plan (SIP) to incorporate the following: A new rule concerning nitrogen oxide (NO<sub>x</sub>) emissions for the ozone season from Electric Generating Units (EGUs) and large non-EGUs; revisions concerning NO<sub>x</sub> emission rate limits for specific source categories; the repeal of

the NO<sub>x</sub> Budget Trading Program; and the repeal of the Clean Air Interstate Rule NO<sub>x</sub> ozone season trading program. This SIP revision would ensure continued compliance by EGUs and large non-EGUs with the requirements of the NO<sub>x</sub> SIP Call.

**DATES:** Comments must be received on or before March 23, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0634 at <http://www.regulations.gov> or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section. For 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:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State’s SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in