

a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts \* \* \*.” The opinion concludes that “[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity Law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot

have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

#### IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision for the adoption of the new 1-hour primary SO<sub>2</sub> NAAQS at a level of 75 ppb to the state regulations, which was submitted on July 12, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the proposed approval of the adoption of the 1-hour primary SO<sub>2</sub> NAAQS into Virginia’s regulation does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: October 3, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011–26628 Filed 10–13–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA–HQ–OAR–2009–0491; FRL–9479–1]

RIN 2060–AR22

### Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing or seeking comment on revisions to the final Transport Rule promulgated on August 8, 2011. These revisions address discrepancies in unit-specific modeling assumptions that affect the proper calculation of Transport Rule state budgets and assurance levels in Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin, as well as new unit set-asides in Arkansas and Texas. EPA is

also proposing to revise allowance allocations to specific units covered by certain consent decrees that restrict the use of those allowances. These important technical fixes maintain the Transport Rule's ability to achieve the elimination of significant contribution and interference with maintenance as quantified by the proper application of these methodologies.

EPA is also proposing to amend the assurance penalty provisions of the rule to make them effective beginning January 1, 2014, rather than in 2012, in order to promote the development of allowance market liquidity as these revisions are finalized. EPA believes that deferring the effective date of the assurance provisions would provide additional confidence and would not compromise the air quality goals of the program.

In addition, we are proposing to correct typographical errors in the rule.

**DATES: Comments:** Comments must be received on or before November 14, 2011 unless a public hearing is requested in which event comments must be received on or before November 28, 2011.

**Public Hearing:** On October 12, 2011, EPA published a document announcing that if a public hearing on this proposal is requested by October 19, 2011, it will be held on October 28, 2011, at 9 a.m. at USEPA. Please refer to the public hearing notice published at 76 FR 63251 for additional information on the public hearing.

EPA will provide further information about the hearing on its Web page if a hearing is requested. Oral testimony will be limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0491, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- **Mail:** Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- **Hand Delivery:** Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0491. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Gabrielle Stevens, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343-9252, e-mail at [stevens.gabrielle@epa.gov](mailto:stevens.gabrielle@epa.gov). Electronic copies of this document can be accessed through the EPA Web site at: <http://epa.gov/crossstaterule>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

**Regulated Entities.** Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry .....	2211, 2212, 2213	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your

facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 97.404, 97.504, and 97.604 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult

the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. 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 proposal will also be available on the

World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the transport rule Web site <http://www.epa.gov/airtransport>.

*C. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2009-0491.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

*D. How is this preamble organized?*

I. General Information

- A. Does this action apply to me?

- B. Where can I get a copy of this document and other related information?
- C. What should I consider as I prepare my comments for EPA?
- D. How is the preamble organized?
- II. Summary of Proposed Rule and Background
- III. Specific Revisions
- A. Budgets/New Unit Set-Aside Revisions
- B. Allowance Allocation Revisions to Units Covered by Existing Utility Consent Decrees
- C. Amend the Assurance Penalty Provisions To Make Them Effective Starting in 2014
- D. Correct Typographical Errors
- IV. Recodification of Transport Rule Allowances
- V. 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 (RFA)
- 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

**II. Summary of Proposed Rule and Background**

EPA has identified errors or potential errors in unit-specific modeling assumptions that affect the proper calculation of Transport Rule state budgets in Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin, as well as new unit set-asides in Arkansas and Texas. EPA is proposing to take the following distinct actions to revise individual state budgets and new-unit set-asides: (1) Revise Michigan's annual NO<sub>x</sub> budget to account for an erroneously assumed selective catalytic reduction (SCR) emission control device at one unit; (2) revise Nebraska's annual NO<sub>x</sub> budget to account for an erroneously assumed SCR emission control device at one unit; (3) revise the Texas SO<sub>2</sub> budget to account for erroneously assumed flue gas desulphurization (FGD, or scrubber) emission control devices at three units and revised assumptions regarding flue gas treatment in existing scrubbers at seven units; (4) revise the Arkansas ozone-season new unit set-aside to account for erroneously omitted

projected emissions from one new unit; (5) revise the Texas new unit set-aside to account for erroneously omitted projected emissions for SO<sub>2</sub>, ozone-season NO<sub>x</sub>, and annual NO<sub>x</sub>; (6) revise New Jersey's ozone season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> budgets to account for an erroneously assumed FGD and SCR emission control devices at one unit, and taking into account operational constraints likely to necessitate non-economic generation at six facilities; (7) revise Wisconsin's SO<sub>2</sub> and annual NO<sub>x</sub> budgets to account for erroneously assumed FGD and SCR devices at two units; (8) revise New York's SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> budgets taking into account operational constraints likely to necessitate non-economic generation at ten units; (9) revise Louisiana's ozone season NO<sub>x</sub> budget taking into account operational constraints likely to necessitate non-economic generation at twelve units; (10) revise Mississippi's ozone season NO<sub>x</sub> budget taking into account operational constraints likely to necessitate non-economic generation at four units; (11) revise the Texas annual NO<sub>x</sub> and ozone season NO<sub>x</sub> budgets taking into account operational constraints likely to necessitate non-economic generation at seven units; and (12) revise Florida's ozone-season NO<sub>x</sub> budget taking into account the unavailability of a previously operating nuclear unit. See section III.A of this preamble for further explanation of these revisions.

These proposed revisions to state budgets also entail revisions to the affected states' assurance levels, as the variability limits for each state are calculated as a percentage of the applicable budget. See the final Transport Rule, 76 FR 48208, 48267-68, August 8, 2011 (explaining variability limit derivation). The purpose of these revisions is to establish state budgets and new unit set-asides that are consistent with the proper application of methodologies established in the final Transport Rule.

The resulting budgets maintain significant emission reductions from historic levels and are consistent with the final Transport Rule's methodology for defining significant contribution and interference with maintenance. The changes represent the proper application of the methodology established in the final Transport Rule. No changes to that methodology are being proposed, and EPA is not reopening the methodology established in the final Transport Rule for public comment. EPA is also not proposing any change to the levels of stringency (*i.e.*, cost per ton) selected in the final

Transport Rule's determination of significant contribution and interference with maintenance and is not reopening that issue for public comment. See "Significant Contribution Assessment TSD" in the docket for this rulemaking for a demonstration of how the revisions in this rulemaking represent the proper application of and are consistent with the methodology developed in the final Transport Rule.

It is EPA's intent, in conducting this rulemaking, to make the revisions in this proposal as well as to conduct a clearly defined, time-limited process by which any similarly justified revisions to the final Transport Rule state budgets are identified and effectuated in a timely and expeditious manner. To that end, EPA is seeking that all relevant information that may support similar revisions be submitted in full by the comment deadline on this rulemaking, such that the Agency may consider whether a subsequent and timely rulemaking should address any further revisions to the final Transport Rule state budgets. EPA believes that the likelihood of additional substantive revisions merited to the Transport Rule state budgets is limited, considering that EPA has already conducted several notice-and-comment processes through initial proposal of the Transport Rule and multiple notices of data availability (NODAs) to prompt the public to provide the relevant input information that informs the calculation of the Transport Rule state budgets. Please see section III.A of this preamble for a more detailed description of the type of information EPA is requesting in comments on this rulemaking for this purpose.

EPA is also proposing revisions to allowance allocations at certain units in six states that are affected by existing utility consent decrees. EPA has identified provisions in certain utility consent decrees which the Agency believes would restrict the use of Transport Rule allowances allocated to certain units and effectively make certain Transport Rule reduction requirements marginally more stringent than intended by making certain allowances intended for compliance purposes unavailable. When establishing the state budgets under the final Transport Rule, EPA successfully accounted for the emission reduction requirements of these consent decrees; therefore, the Transport Rule state budgets sustain the environmental protection secured by those existing utility consent decrees. However, when dividing those state budgets into individual unit-level allowance allocations, EPA included allowance

allocations to certain units that exceed those units' allowable emissions under the terms of the applicable consent decree. Under these conditions, the consent decree provisions of concern identified in this proposal would determine the quantity of allocated allowances in excess of allowable emissions at the unit in question and prevent them from being available for compliance use by any source under the Transport Rule programs. Because EPA has already secured the environmental improvements required by the consent decrees by incorporating their emission reductions into the Transport Rule state budgets, there is no environmental need to prevent the allowances from being used for compliance by sources subject to the Transport Rule aside from those sources whose emissions are restricted by the terms of the consent decrees to which they are subject. Therefore, EPA is proposing to revise Transport Rule unit-level allowance allocations to the specific units affected by these consent decrees to reflect their maximum allowable emissions, such that none of the allowances affected by the provisions of concern are unnecessarily removed from use for compliance by other units. While EPA intends to perform this revision to benefit program implementation, EPA does not believe resolution of this issue is a necessary precondition for successful implementation of and compliance with the Transport Rule programs in 2012, because as described in section IV of this preamble, notwithstanding these proposed revisions, EPA will still be able to distribute 99.7 percent of all existing unit allowances under the state budgets established in the final Transport Rule by that rule's November 7 deadline. See section III.B of this preamble for further explanation of this revision.

EPA is also proposing in this action to amend the assurance penalty provisions of the Transport Rule to make them effective January 1, 2014. This change takes account of the fact that the revisions described above are being proposed, and any information described above concerning requested additional revisions may be submitted, close to the commencement of the Transport Rule programs. The proposed amendment to the assurance provisions is intended to promote the development of allowance market liquidity as these revisions are finalized, thereby smoothing the transition from the Clean Air Interstate Rule (CAIR) programs to the Transport Rule programs in 2012. See section III.C of this preamble for further explanation of this revision.

EPA is also proposing to correct typographical errors in certain sections of rule text in parts 52 and 97 in the final Transport Rule. See section III.D of this preamble for further explanation of these corrections.

### III. Specific Revisions

#### A. Budget and New Unit Set-Aside Revisions

After the final Transport Rule was published, EPA identified discrepancies in certain data assumptions that substantially affected the calculation of a few states' budgets in the final rule. Therefore, EPA is proposing the following revisions:

(1) Increase Michigan's 2012 and 2014 annual NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an SCR exists at Monroe Unit 2.

EPA is proposing to revise Michigan's 2012 and 2014 annual NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed an SCR exists at Monroe Unit 2. This SCR is planned, but is not expected to be online in 2012 or 2014. Therefore, EPA is proposing to adjust its 2012 and 2014 projections to reflect projected emissions without an SCR at this unit. This would result in a 5,228 ton increase in the state's annual NO<sub>x</sub> budget. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and "Revisions to Unit Level Allocations under the FIP" in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

This revised assumption about Monroe Unit 2 would also affect the calculation of Michigan's potential ozone-season NO<sub>x</sub> budget (as well as the state's assurance level, new unit set-aside, Indian country new unit set-aside, and unit-level allocations under the FIP) if that state is included in the Transport Rule ozone-season NO<sub>x</sub> program as previously proposed (76 FR 40662, July 11, 2011). EPA will address this issue, along with other public comments submitted on that rulemaking, when the Agency finalizes that rulemaking later this year.

(2) Increase Nebraska's 2012 and 2014 annual NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an SCR exists at Nebraska City Unit 1.

EPA is proposing to increase Nebraska's 2012 and 2014 annual NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an SCR exists at Nebraska City Unit 1. There is no SCR that is present, planned, or under construction at the unit. Therefore, EPA is proposing to adjust its baseline emission projections for the state to reflect projected emissions without an SCR at this unit. This adjustment results in an increase of 3,599 tons to the state's annual NO<sub>x</sub> budget. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and "Revisions to Unit Level Allocations under the FIP" in the docket to this rulemaking for a quantitative demonstration of the effect of this proposed revision on unit-level allocations under the FIP.

(3) Increase the Texas 2012 and 2014 SO<sub>2</sub> budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that scrubbers exist at W.A. Parish Unit 6, J.T. Deely Unit 1, and J.T. Deely Unit 2, and that assumed full flue gas treatment in existing scrubbers at Martin Lake, Monticello, Sandow, W.A. Parish, and Oklaunion facilities.

EPA is proposing to address several revisions to the modeling assumptions affecting the calculation of the Texas SO<sub>2</sub> budget. In particular, EPA is proposing to increase the Texas SO<sub>2</sub> budget in accordance with a revision to the final Transport Rule analysis that erroneously assumed flue-gas desulfurization (FGD) technology is installed on J.T. Deely Units 1 and 2 and W.A. Parish Unit 6 by 2012. At the time that EPA conducted its final Transport Rule analysis to determine state budgets, EPA had information (both from public sources, as cited below, as well as from a private subscription-only power sector pollution control database) showing that FGD retrofits for these sources were originally planned or announced to be installed by 2012.<sup>1 2</sup> However, newer information shows that

these FGDs are no longer scheduled to be installed in 2012.

A number of facilities in Texas currently face limitations regarding the amount of flue gas that can be treated in their existing FGDs. In the final Transport Rule analysis, EPA relied on the SO<sub>2</sub> removal efficiency that these facilities reported at their scrubbers to the Energy Information Administration (EIA). However, EPA has now determined that the facilities' reports only intended to address the removal efficiency for the portion of the flue gas treated in the scrubber. For this reason, that removal efficiency should not be applied to the total amount of sulfur combusted in the coal consumed (as some of the flue gas at these units must be vented without being treated in the scrubber as originally constructed). When the SO<sub>2</sub> removal rates are decreased to reflect the reported operational constraint of each affected scrubber's flue gas treatment, the projected emission level for Texas, after all significant contribution identified in the final Transport Rule is addressed, correspondingly rises.

Therefore, in accordance with the revised unit-level input assumptions regarding existing scrubbers and flue gas treatment at the Texas units described above, EPA is proposing to increase the state's 2012 and 2014 SO<sub>2</sub> budgets each by 70,067 tons. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of how each of these unit-level adjustments affects the calculation of this proposed revision, as well as for the impacts this revision would have on the state's assurance levels, new unit set-aside, and Indian country new unit set-aside.

(4) Increase Arkansas' ozone-season NO<sub>x</sub> new unit set-aside in accordance with a revision to the final Transport Rule's calculation of the new unit set-aside that erroneously omitted Plum Point Unit 1's projected emissions.

EPA is not proposing to adjust Arkansas' ozone season NO<sub>x</sub> budget in this rulemaking. However, EPA is proposing to adjust the portion of that budget dedicated to the new unit set-aside account. In the final Transport Rule, EPA had determined a 2 percent new unit set-aside for ozone season NO<sub>x</sub> in the state. That value would be changed to 5 percent in this rulemaking. The revision is consistent with the new unit set-aside methodology described in the final rule. The updated value simply reflects the revised classification of one unit to be treated as a new unit for purposes of unit-level allowance allocation. This unit, Plum Point Unit 1,

commenced commercial operation on or after January 1, 2010, and therefore should be considered a new unit under the final Transport Rule's unit-level allocation methodology (76 FR 48290); however, the final Transport Rule erroneously omitted this unit's projected emissions from the calculation of Arkansas' ozone-season NO<sub>x</sub> new unit set-aside. Including this unit's projected emissions in the calculation would yield a revised new unit set-aside of 5 percent of the state's budget instead of the previous 2 percent value. See the "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision.

This proposed revision to Arkansas' new unit set-aside would necessarily result in changes to allowance allocations to existing units. See "Revisions to Unit Level Allocations under the FIP" tables in the docket to this rulemaking for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(5) Increase Texas' ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> new unit set-asides in accordance with a revision to the final Transport Rule's calculations of the new unit set-asides that erroneously omitted Oak Grove Unit 2's projected emissions.

EPA is also proposing a revision to the calculation of the new unit set-asides for ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> in Texas. The updated values would simply reflect the revised classification of one unit to be treated as a new unit for purposes of unit-level allowance allocation. This unit, Oak Grove Unit 2, commenced commercial operation on or after January 1, 2010, and therefore should be considered a new unit under the final Transport Rule's unit-level allocation methodology; however, the final Transport Rule erroneously omitted this unit's projected emissions from the calculation of Texas's ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> new unit set-asides. Including this unit's projected emissions in the calculation would yield revised new unit set-asides of 4 percent of the state's ozone-season NO<sub>x</sub> budget, 4 percent of the state's annual NO<sub>x</sub> budget, and 5 percent of the state's SO<sub>2</sub> budget. See the "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision.

(6) Increase New Jersey's 2012 and 2014 ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> budgets in accordance with revisions to the final Transport Rule analysis that erroneously assumed that

<sup>1</sup> Corporate Sustainability Report", CPS Energy, 2010. P.57. Retrieved from [http://www.cpsenergy.com/files/Sustainability\\_Report.pdf](http://www.cpsenergy.com/files/Sustainability_Report.pdf).

<sup>2</sup> Business Wire, (2006). NRG Announces Comprehensive Repowering Initiative [Press release]. Retrieved from [http://phx.corporate-ir.net/phoenix.zhtml?c=121544&p=irol-newsArticle\\_Print&ID=874575&highlight](http://phx.corporate-ir.net/phoenix.zhtml?c=121544&p=irol-newsArticle_Print&ID=874575&highlight).

an SCR and scrubber exist at BL England Unit 1 and to reflect operational constraints likely to necessitate non-economic dispatch at six other facilities in 2012.

EPA is proposing to revise New Jersey's ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> budgets in accordance with revisions to assumed control technologies at BL England Unit 1 as well as operational constraints affecting units at six other facilities. The SCR and scrubber that had been planned to be installed at BL England Unit 1, and which EPA assumed would be in place in 2012, are not actually required by a New Jersey administrative order until December 2013. Furthermore, the agreement limits operation of the unit to the ozone season. Therefore, EPA is proposing to adjust New Jersey's 2012 state budgets to reflect projected emissions without an SCR or scrubber at this unit and its operation only during the ozone season.

EPA is also proposing revisions to New Jersey's state budgets based on information demonstrating that northern New Jersey is an out-of-merit-order dispatch area, meaning that units in that area are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in this out-of-merit-order dispatch area are likely to necessitate what would otherwise be non-economic generation at six New Jersey plants (Bergen, Edison, Essex, Kearny, Linden, and Sewaren Generating Stations) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the New Jersey emission budgets in the final Transport Rule. EPA is proposing to adjust New Jersey's emission budgets based on analysis of the frequency these units have recently been called to run for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's 2012 and 2014 total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from BL England Unit 1 and the six plants with non-economic generation to account for the input assumption

changes described above. These calculations yield increases to the New Jersey 2012 state budgets for SO<sub>2</sub> of 2,096 tons, annual NO<sub>x</sub> of 420 tons, and ozone-season NO<sub>x</sub> of 592 tons; and 2014 state budget increases for annual NO<sub>x</sub> of 112 tons, and ozone-season NO<sub>x</sub> of 195 tons. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level and new unit set-aside, and "Revisions to Unit Level Allocations under the FIP" in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(7) Increase Wisconsin's 2014 SO<sub>2</sub> budget and 2012 and 2014 annual NO<sub>x</sub> budget in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an FGD exists at Weston Unit 3, wet FGDs (instead of dry FGDs) exist at Columbia Units 1 and 2, and a SCR exists at John P. Madgett Unit 1.

EPA is proposing to increase Wisconsin's SO<sub>2</sub> budget in accordance with revisions to the Weston Unit 3 and Columbia Units 1 and 2 FGD status in 2014. EPA had assumed that a scrubber would be available at Weston Unit 3 in 2014 in its base case modeling. There is no FGD expected to be online at the facility in 2014. The final Transport Rule did not assume an operating scrubber at Weston Unit 3 in 2012, but did assume the FGD would be in place and operating by 2014. Therefore, EPA is proposing to adjust Wisconsin's 2014 SO<sub>2</sub> budget to reflect the unit's operation without an FGD in 2014.

EPA had also assumed that the two scrubbers being installed at Columbia Units 1 and 2 were wet scrubbers. Instead, dry scrubbers have been planned and approved at these units. In EPA's modeling, the assumed removal rate of a new wet scrubber is 96 percent and a new dry scrubber is 92 percent. Therefore, the 2014 modeled remedy emissions from these units would be twice their current amount, if the assumption of wet scrubbers was changed to dry scrubbers for the facility. No change is needed for 2012 since EPA did not model any scrubbers operating at those units in that year.

To account for these adjustments, EPA is proposing to increase the Wisconsin SO<sub>2</sub> budget by a total of 7,757 tons in 2014.

EPA is also proposing to increase Wisconsin's annual NO<sub>x</sub> budget in 2012 and 2014. EPA had assumed a SCR would be installed at John P. Madgett Unit 1 in 2012 in its budget

determination and remedy modeling. There is no SCR expected to be online in 2012 or 2014 at the unit. Therefore, EPA is proposing to adjust Wisconsin's annual NO<sub>x</sub> budgets to reflect the unit's operation without a SCR. This would result in a 2,473 ton increase to the state's annual NO<sub>x</sub> budget.

The revised assumptions about John P. Madgett Unit 1 would also affect the calculation of Wisconsin's potential ozone-season NO<sub>x</sub> budget (as well as the state's assurance level, new unit set-aside, Indian country new unit set-aside, and unit-level allocations under the FIP) if that state is included in the Transport Rule ozone-season NO<sub>x</sub> program as previously proposed (76 FR 40662, July 11, 2011). EPA will address this issue, along with other public comments submitted on that rulemaking, when the Agency finalizes that rulemaking later this year.

See the "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and "Revisions to Unit Level Allocations under the FIP" in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(8) Increase New York's 2012 and 2014 ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> budgets in accordance with a revision to the final Transport Rule analysis that did not reflect operational constraints likely to necessitate non-economic dispatch at certain units.

EPA is proposing to increase the New York state ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and SO<sub>2</sub> budgets in accordance with revisions to the assumed operation of several specific units in 2012, to satisfy three specific immediate-term operational constraints documented by the New York Independent System Operator (NYISO). These three constraints are referred to here as the N-1-1 Contingency, the Minimum Oil Burn Rules, and out-of-merit-order dispatch conditions, which collectively affect the likely 2012 and 2014 operations of specific units in the New York City and Long Island areas.

The N-1-1 Contingency requires that certain units be available to deliver generation with advance notice of only 30 seconds at certain times during the year. These specific units require several hours to reach the necessary level of generation under these contingency circumstances; therefore, the contingency requirement frequently necessitates their ongoing operation

whether or not the contingency is actually triggered at any given time. Based on information published by NYISO, EPA identified Arthur Kill Generating Station, Ravenswood, and Astoria Generating Station as needing to maintain minimum generation levels at two units in each facility to meet the N-1-1 Contingency constraint.

The Minimum Oil Burn Rules require that certain units be able to immediately burn oil in the event of a natural gas supply disruption to the New York City and Long Island area infrastructure. Some units are incapable of immediately switching fuel, so they must burn a minimum amount of oil on an ongoing basis when operating to comply with this requirement. EPA determined that the Minimum Oil Burn Rules would require residual fuel oil consumption at the Arthur Kill Generating Station, Ravenswood, Astoria Generating Station, and Northport facilities. Based on information published by the NYISO, EPA determined that these units would burn oil in 2012 and 2014 at the same proportion of total projected heat input as shown for the share of historic heat input reported as residual fuel oil at those facilities.

Data presented in the NYISO 2010 Comprehensive Area Transmission Review Study and the NYISO Operating Study, Summer 2011, demonstrate that Long Island is an out-of-merit-order dispatch area, meaning that units in that area are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in this out-of-merit-order dispatch area are likely to necessitate in the immediate future what would otherwise be non-economic generation at 3 units at the Northport facility.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule. These calculations yield increases to the New York 2012 and 2014 state budgets for SO<sub>2</sub> of 3,527 tons, annual NO<sub>x</sub> of 3,485 tons, and ozone-season NO<sub>x</sub> of 1,911 tons. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision,

as well as for the impacts this revision would have on the state's assurance levels, new unit set-aside, and Indian country new unit set-aside.

(9) Increase Louisiana's 2012 and 2014 ozone-season NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis to reflect operational constraints likely to necessitate non-economic dispatch at twelve units.

EPA is proposing revisions to Louisiana's 2012 and 2014 state ozone season NO<sub>x</sub> budgets based on information demonstrating that the West of the Atchafalaya Basin (WOTAB), Downstream of Gypsy (DSG), and Amite South regions of Louisiana are out-of-merit-order dispatch areas, meaning that units in those areas are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in these out-of-merit-order dispatch areas are likely to necessitate what would otherwise be non-economic generation at five Louisiana plants (R.S. Nelson, Nine Mile Point, Michoud, Little Gypsy, and Waterford) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the Louisiana emission budget in the final Transport Rule. EPA is proposing to adjust Louisiana's ozone season NO<sub>x</sub> emission budget based on analysis projecting the minimum frequency these units will have to run in the immediate term for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from the five plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to Louisiana's 2012 and 2014 state budgets for ozone-season NO<sub>x</sub> of 4,231 tons. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian

country new unit set-aside, and "Revisions to Unit Level Allocations under the FIP" in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(10) Increase Mississippi's 2012 and 2014 ozone-season NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis to reflect operational constraints likely to necessitate non-economic dispatch at certain units.

EPA is proposing revisions to Mississippi's state ozone season NO<sub>x</sub> budget based on information demonstrating that the Mississippi Region is an out-of-merit-order dispatch area, meaning that units in that area are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in this out-of-merit-order dispatch area are likely to necessitate what would otherwise be non-economic generation at three Mississippi plants (Rex Brown, Gerald Andrus, and Baxter Wilson) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the Mississippi emission budget in the final Transport Rule. EPA is proposing to adjust Mississippi's 2012 and 2014 ozone season NO<sub>x</sub> emission budgets based on analysis projecting the minimum frequency these units will have to run in the immediate-term for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from the three plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to Mississippi's 2012 and 2014 state budgets for ozone-season NO<sub>x</sub> of 2,136 tons. See "Technical Revisions and Adjustments to State Budgets TSD" in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-



aside, and “Revisions to Unit Level Allocations under the FIP” in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(11) Increase Texas’s 2012 and 2014 annual and ozone-season NO<sub>x</sub> budgets in accordance with a revision to the final Transport Rule analysis to reflect operational constraints likely to necessitate non-economic dispatch at certain units.

EPA is proposing revisions to Texas’s 2012 and 2014 state annual and ozone season NO<sub>x</sub> budgets based on information demonstrating that the West of the Atchafalaya Basin (WOTAB) and Western Regions are out-of-merit-order dispatch areas, meaning that units in those areas are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in these out-of-merit-order dispatch areas are likely to necessitate what would otherwise be non-economic generation at two Texas plants (Lewis Creek and Sabine) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the Texas emission budgets in the final Transport Rule. EPA is proposing to adjust Texas’s emission budgets based on analysis projecting the minimum frequency these units will have to run in the immediate-term for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state’s total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from the two plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to Texas’s 2012 and 2014 state budgets for annual NO<sub>x</sub> of 1,375 tons and ozone-season NO<sub>x</sub> of 1,375 tons. See “Technical Revisions and Adjustments to State Budgets TSD” in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state’s assurance level, new unit set-aside, and Indian country new unit set-aside, and

“Revisions to Unit Level Allocations under the FIP” in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(12) Increase Florida’s 2012 ozone-season NO<sub>x</sub> budget in accordance with a revision to the final Transport Rule analysis to reflect the unavailability of Crystal River Unit 3, a nuclear unit.

EPA’s power sector analysis in the final Transport Rule that informed its calculation of Florida’s state ozone-season budget included generation from Crystal River Unit 3, a nuclear unit that has operated historically. However, utilities in Florida have notified EPA that this unit will be offline for repairs throughout 2012 and is expected to return to service in 2013. As such, EPA expects that the generation previously projected in the Transport Rule analysis from this unit in 2012 will necessarily have a different origin with different emission consequences that should be considered in the calculation of Florida’s ozone-season NO<sub>x</sub> state budget. EPA has calculated that this replacement generation would yield an increase of 819 tons of ozone-season NO<sub>x</sub> in 2012 and is proposing to increase Florida’s 2012 ozone-season NO<sub>x</sub> budget by 819 tons, accordingly. See “Technical Revisions and Adjustments to State Budgets TSD” in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state’s assurance level, new unit set-aside, and Indian country new unit set-aside, and “Revisions to Unit Level Allocations under the FIP” in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

EPA has also received and is making available in the public docket for this proposal additional unit-level information provided by Florida utilities addressing assumptions of each unit’s ability to control ozone-season NO<sub>x</sub>. EPA requests comment on all aspects of the data in the docket, including whether the emission data provided in this information is a more accurate representation of achievable NO<sub>x</sub> emission rates in 2012, and whether using this data would be consistent with the methodology used in the Transport Rule. EPA specifically requests comment on whether this information could support a further revision to the state’s ozone-season NO<sub>x</sub> budget, and if so, how such a revision should be calculated. See “Information Submitted by Florida Utilities” in the docket for this rulemaking.

*Further Explanation on Revisions and Request for Comments.* All of the proposed revisions to state budgets and new unit set-asides described above would correspondingly affect unit-level allowance allocations in the states involved. Specifically, any changes to the levels of new unit set-asides or state budgets would be carried through to unit-level allocations based on the final Transport Rule allocation methodology for existing units (including any amendments made to specific unit-level allocations in this rulemaking, described below). For example, if a state budget would increase, then the share of that increase going to existing units would be apportioned based on the final Transport Rule’s allocation methodology to existing units (aside from specific unit-level allocation adjustments included in this proposal pertinent to utility consent decrees, discussed below in section III.B of this preamble). Unit-level allocations to potential covered sources under the Transport Rule have been updated to reflect all of the proposed revisions described in this proposal and are set forth in the “Revisions to Unit Level Allocations under the FIP” TSD in the docket for this rulemaking.

EPA evaluated the likely air quality impacts of the revisions presented above using the air quality assessment tool, on a state-by-state and case-by-case basis, for the SO<sub>2</sub> budget increases in 2014 for Texas, New York, and Wisconsin, and compared those estimates to the final Transport Rule air quality analysis. The results do not change the conclusions that EPA made about the appropriateness of controlling upwind emissions at the cost-effective thresholds selected in the final Transport Rule to successfully quantify and eliminate significant contribution to nonattainment and interference with maintenance at downwind receptors. For more information, this evaluation can be found in the “Significant Contribution Assessment Technical Support Document” in the docket for this rulemaking.

For this proposal, EPA also assessed this proposal’s revisions to annual NO<sub>x</sub> and ozone-season NO<sub>x</sub> state budgets against each state’s total NO<sub>x</sub> emission inventories which informed the air quality projections in the final Transport Rule analysis. The annual NO<sub>x</sub> budget increases for Michigan, Nebraska, New Jersey, New York, Texas, and Wisconsin are 5,228, 3,599, 112, 3,485, 1,375 and 2,473 tons, respectively. Comparing those budget increases to the total 2014 annual NO<sub>x</sub> emission inventories in those states under the final Transport Rule’s control



scenario analysis, EPA calculates that these revisions represent increases of 1.2 percent, 2.1 percent, 0.1 percent, 0.8 percent, 0.1 percent, and 1.0 percent, respectively, of the total annual NO<sub>x</sub> emission inventories for those states in the final Transport Rule's 2014 control scenario analysis. See the "Significant Contribution Assessment TSD" in the docket for this rulemaking for more details. These increases represent only a small portion of each state's total NO<sub>x</sub> emissions.

The ozone-season NO<sub>x</sub> budget increases in 2014 for Louisiana, Mississippi, New Jersey, New York, and Texas are 4,231, 2,136, 195, 1,911, and 1,375 tons, respectively. Comparing those budget increases to the total 2014 ozone-season NO<sub>x</sub> emission inventories in those states under the final Transport Rule's control scenario analysis, EPA calculates that these revisions represent increases of 2.2 percent, 2.4 percent, 0.2 percent, 1.0 percent, and 0.2 percent, respectively, of the total ozone-season NO<sub>x</sub> emission inventories for those states in the final Transport Rule's 2014 control scenario analysis. See the "Significant Contribution Assessment TSD" in the docket for this rulemaking for more details. These increases represent only a small portion of each state's total ozone-season NO<sub>x</sub> emissions.

EPA requests comment on the revised unit-level and utility-system operational information described above and on the corresponding proposed revisions in state budgets, variability limits, new unit set-asides, Indian country new unit set-asides, and unit-level allocations resulting from the application of such revised information using the methodologies set forth in the final Transport Rule for developing state budgets, variability limits, new unit set-asides, Indian country new unit set-asides, and unit-level allocations. EPA is not requesting comment on those methodologies set forth in the final Transport Rule. For example, EPA is not seeking comment on the methodology by which existing unit allocations are determined with regard to any given Transport Rule state budget.<sup>3</sup>

<sup>3</sup> Further, EPA notes that the proposed rule text includes tables that are complete in that they show, for each Transport Rule trading program, both (i) The amounts for certain state budgets, new unit set-asides, Indian country set-asides, and state variability limits that reflect proposed revisions discussed in this notice; and (ii) the amounts for other state budgets, new unit set-asides, Indian country set-asides, and state variability limits amounts that do not reflect any proposed revisions discussed in this notice. Except as discussed below in this section of the notice, EPA is not requesting comment on those budgets, new unit set-asides, Indian country set-asides, and variability limits that

Moreover, EPA recognizes that parties may be aware of other immediate-term unit-specific operational constraints not accounted for in the final Transport Rule whose inclusion may warrant revisions in state budgets, with associated revisions to the state assurance levels and unit-level allocations for existing units. EPA has already provided several opportunities—through the proposed Transport Rule and subsequent notices of data availability—for the public, including stakeholders, to present unit-level information demonstrating constraints on immediate-term operations. However, EPA will accept—by the deadline for comment on this proposal—submission of additional unit-level operational information that would have a material impact on the calculation of Transport Rule state budgets (with associated impacts on corresponding assurance levels and unit-level allocations for existing units). For this purpose, EPA intends a "material impact" to reflect a corresponding recalculation of the relevant state budget that would be at least 1 percent different from that budget's value as calculated in the final Transport Rule (76 FR 48208, August 8, 2011). EPA remains focused on successful implementation of the Transport Rule programs and does not believe that a change of less than 1 percent in a state's budget would be a meaningful action to further this goal. As a result, EPA encourages commenters to consider whether or not revisions to a given unit's or group of units' input assumptions would yield a material impact of at least a 1 percent difference in the calculation of the relevant state budget before submitting this information to EPA for review.

EPA is therefore accepting for review information provided in comments on this rulemaking specifically addressing the following topics for specific electric generating units:

(1) Post-combustion pollution control equipment (such as SCRs and FGDs) assumed in the final Transport Rule

are shown in the proposed rule text tables but that do not reflect the proposed revisions discussed in this notice. For example, the budget and new unit set-aside revisions discussed in this section of the notice involve only a limited number of states (*i.e.*, Arkansas, Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin). Except as discussed below in this section of the notice, EPA is not reopening, or requesting comment on, amounts in the proposed rule text tables for any other states. By further example, this section of the notice discusses a revision of Arkansas' new unit set-aside, but not of Arkansas' budget. Except as discussed below in this section of the notice, EPA is not requesting comment on the amount of Arkansas' budget.

analyses to be present by 2012 at the unit in question; and/or

(2) Immediate-term (*i.e.*, binding on 2012) operational requirements necessitating non-economic generation at the unit in question, including data that demonstrate why the unit in question is required to generate in the immediate term for reasons other than the regional economic sale of electricity, and how often during the ozone season and during the calendar year that such non-economic generation is necessitated from that unit.

EPA will review information provided in comments addressing the topics described above and will determine if any of the information merits a subsequent proposal of revisions to the Transport Rule programs beyond the actions presented in this proposal.

#### *B. Allowance Allocation Revisions to Units Covered by Existing Utility Consent Decrees*

After the final Transport Rule was published, EPA determined that while the state budgets accurately incorporated the emission reduction requirements of existing utility consent decrees, the unit-level allowance allocations under the Transport Rule FIPs did not properly account for provisions in those consent decrees that effectively require the surrender, or restrict the trading, of "excess" Transport Rule allowances. As a result, Transport Rule allowance allocations to certain units may unintentionally reduce the availability of some of those allowances to other sources, given the restrictions on the use of those allowances by the initial recipient unit imposed by the applicable consent decree.

In today's action, EPA is proposing to add a constraint on Transport Rule unit-level allowance allocations designed to reflect the maximum allowable emissions at the units affected by existing utility consent decrees which contain annual tonnage limits and require the surrender or restrict trading of Transport Rule allowances allocated in excess of annual tonnage limits. See "Assessment of Impact of Consent Decree Annual Tonnage Limits on Transport Rule Allocations TSD" in the docket for this rulemaking for information on the consent decrees covered by the proposed addition of the new constraint for purposes of determining unit-level allocations.

The addition of this constraint would align unit level allocations for units described in several existing Federally-enforceable consent decrees with the annual tonnage limits in those decrees. This constraint would prevent heat

input-based allocations from exceeding the terms of Federally-enforceable consent decrees that contain annual tonnage limits for SO<sub>2</sub> and/or NO<sub>x</sub>. Because existing consent decrees that establish annual tonnage limits for SO<sub>2</sub> and/or NO<sub>x</sub> do so at the system or facility level, EPA calculated unit-level annual tonnage limit equivalents (unit-level caps) for purposes of allocating allowances to individual units. EPA is not seeking comment on any elements of the allocation methodology finalized in the final Transport Rule (76 FR 48288–90). Rather, EPA is seeking comment only on the addition of a unit-level consent decree constraint and unit-level cap apportionment methodology.

The proposed additional constraint would affect unit-level allocations in six states—Alabama, Indiana, Kansas, Kentucky, Ohio, and Tennessee—with units subject to existing Federally-enforceable consent decree annual tonnage limits. These consent decree requirements have already been accounted for in the determination of budgets for these states. EPA is proposing to establish unit-level caps for 82 units covered by annual tonnage limits in Federally-enforceable consent decrees in these six states. The addition of this constraint would not alter any state budget. This additional constraint also would have no impact on existing unit-level allocations in states that do not contain units covered by a Federally-enforceable consent decree with annual tonnage limits.

EPA is proposing to revise the Transport Rule unit-level allocations for the specific units subject to these consent decrees, such that allowance allocations would be constrained by both historical emissions (as described in the final Transport Rule (76 FR 48290)) and a unit-level cap derived from the annual tonnage limit in the Federally-enforceable consent decree. Although these revisions would not alter the state budgets, they would have the effect of increasing the number of allowances within the budget that are available for use for compliance purposes and that would not otherwise be available without this proposed change to the allocation of allowances—such that the total number of allowances available would equal the state's emission budget, as intended. These proposed revisions are thus intended to revise the application of the final Transport Rule's unit-level allowance allocation methodology to enable the proper implementation of state budgets under the programs. While EPA intends to perform this revision to benefit program implementation, EPA does not

believe resolution of this issue is a necessary precondition for successful implementation of and compliance with the Transport Rule programs in 2012, as notwithstanding these proposed revisions, EPA will still be able to distribute 99.7 percent of all existing unit allowances under the state budgets established in the final Transport Rule by that rule's November 7 deadline. See section IV of this preamble for further information about allowance recordation.

EPA calculated unit-level caps for each unit subject to an SO<sub>2</sub> and/or NO<sub>x</sub> annual tonnage limit contained in a Federally-enforceable consent decree. A unit-level cap is an apportionment of the applicable system- or facility-wide consent decree annual tonnage limit. The apportionment of a system- or facility-wide consent decree annual tonnage limit to a unit level is solely for the purposes of Transport Rule allocations and does not modify, or create additional, consent decree requirements or limitations.

EPA is not proposing to limit allocations to units covered by consent decrees that do not contain SO<sub>2</sub> and/or NO<sub>x</sub> annual tonnage limits. The Agency determined that calculation of unit-level caps where annual tonnage limits do not exist would require the use of unit-level projections whose application in setting unit-level allocations would be difficult to support and that, in any event, adjustment of unit-level allocations using such unit-level caps would not be necessary. Calculating a unit-level cap from other consent decree directives would require projections about future utilization and emissions performance of each unit involved, increasing the complexity and uncertainty of the approach. Further, EPA believes that there are few Transport Rule allowances that might be rendered unavailable for compliance by the consent decrees that contain trading restrictions or allowance surrender requirements but that do not contain annual tonnage limits.

EPA is proposing to follow a two-step methodology to identify the specific unit-level allocation constraints that would be associated with this proposed additional constraint. First, EPA would determine if the annual tonnage limit in an existing Federally-enforceable consent decree that is already reflected in a state budget is more restrictive than the unit-level allocations under the Transport Rule by comparing the Federally-enforceable consent decree annual tonnage limits for calendar year 2012 and thereafter to aggregate unit-level allocations (as determined using the approach finalized in the final Transport Rule) for all units affected by

the annual tonnage limit. If in 2012 or thereafter the collective unit-level allocations are greater than the Federally-enforceable consent decree annual tonnage limit, EPA would apply unit-level caps equal, in aggregate, to the Federally-enforceable consent decree annual tonnage limit.

If a unit is shut down by a Federally-enforceable consent decree or, in the case of SO<sub>2</sub>, repowers to natural gas or shuts down, the unit-level cap would be calculated as zero in any year following the required shut down or repower when the unit would otherwise receive allocations using the approach in the final Transport Rule (76 FR 48287 and 48289–90).

Second, EPA would calculate unit-level caps for 2012 and thereafter on Transport Rule allowances for each unit covered by a system- or facility-wide annual tonnage limit in a Federally-enforceable consent decree that is more restrictive than current allocations for the units involved. To accomplish this, EPA would first calculate a ratio, expressed as a percentage, comparing the annual tonnage limit in the Federally-enforceable consent decree to the aggregate allocations listed in the “Final Transport Rule Unit Level Allocations under the FIP” (<http://www.epa.gov/crossstaterule/actions.html>) for units covered by the Federally-enforceable consent decree annual tonnage limit to the annual tonnage limit. EPA would then multiply this ratio by the unit-level allocation listed in the “Final Transport Rule Unit Level Allocations under the FIP” (<http://www.epa.gov/crossstaterule/actions.html>) for each unit involved. The allocations for a given year would be limited to this unit-level cap. As noted above, in some situations the unit level cap for a 2012 or thereafter would be zero if a Federally-enforceable consent decree requires the shutdown or repowering of a unit.

An example of how EPA would determine unit level caps follows:

Step 1—EPA determines that facility ABC consists of two units subject to both a Federally-enforceable consent decree annual tonnage limit and the Transport Rule NO<sub>x</sub> annual program. The consent decree system-wide annual tonnage limit is 3,000 tons in calendar year 2012. The NO<sub>x</sub> allowance heat input-based allocation (as described in the final Transport Rule (76 FR 48288–90)) for the two units in calendar year 2012 is 4,000 allowances to Unit 1 and 2,000 allowances to Unit 2—a total of 6,000 allowances. Because the total of the allowances allocated to the two units is higher than the annual tonnage limit, EPA needs to calculate unit-level caps for Unit 1 and Unit 2.

Step 2a—The consent decree system-wide annual tonnage limit of 3,000 tons is divided

by the system-wide heat input-based allocations of 6,000 tons resulting in a ratio of 0.5, or 50 percent.

Step 2b—EPA calculates the unit-level cap for Unit 1 as 4,000 allowances  $\times$  50 percent, or 2,000 allowances, and for Unit 2 as 2,000 allowances  $\times$  50 percent, or 1,000 allowances.

EPA would apply this additional unit-level constraint when calculating existing unit-level allocations under the final Transport Rule FIPs. This additional unit level constraint would be applied in steps 9 and 10 of the methodology described in the preamble to the final Transport Rule (76 FR 48290). This additional constraint would be applied in step 9 to limit allocations to existing units covered by consent decrees. This constraint would be applied in step 10 to ensure that any allowances that cannot be allocated to existing units (because all existing units are subject to either the constraint on maximum historical emissions or this additional constraint) would be directed to the state's new unit set aside. For example, EPA has determined that, if this additional constraint is finalized as proposed, all the units in the state of Tennessee would be constrained by either historical emissions or a unit-level cap for the Transport Rule SO<sub>2</sub> Group 1 program in calendar years 2013, 2018, 2019, and each year thereafter. As described above, the new unit set aside for the state of Tennessee would increase in 2013, 2018, 2019, and each year thereafter, by 8,460, 3,173 and 5,225 tons respectively.

EPA is not seeking comment on any aspects of the allocation methodology in the final Transport Rule (76 FR 48290). EPA is only seeking comment on the addition of the constraint described above to steps 9 and 10 of that methodology. See "Assessment of Impact of Consent Decree Annual Tonnage Limits on Transport Rule Allocations TSD" in the docket for this rulemaking for further information on the proposed addition of the new constraint for purposes of determining unit-level allocations.

### *C. Amend the Assurance Penalty Provisions To Make Them Effective Starting in 2014*

EPA is also proposing in this action to amend the effective date of the Transport Rule assurance provisions to make them effective beginning on January 1, 2014. During outreach discussions with various stakeholders, the application of assurance penalties at the outset of the program has been raised as a major concern for compliance and market development in the early years of the program. Several stakeholders have expressed concern

that Transport Rule allowance market development may be delayed by uncertainty over how each state will transition from 2010 and 2011 emission levels to meet the projected Transport Rule assurance levels in 2012 and 2013.

Under the assurance provisions, a state's emissions for any control period in a given year must not exceed the state assurance level, *i.e.*, the state budget plus the state's variability limit. In order to implement this requirement, EPA first determines whether, for the control period, any state's total emissions exceeded the state's assurance level. If a state had emissions exceeding the state assurance level, then EPA applies additional criteria to determine which owners and operators of units in the state will be subject to the assurance penalty, which is a requirement to surrender additional allowances. In applying the additional criteria, EPA identifies which groups of units with a common designated representative (DR) in the state had emissions exceeding the respective common DR's share of the state assurance level, and calculates what percentage each such group's emissions above the common DR's share comprise of the state's emissions above the state assurance level. The assurance penalty applied to the owners and operators of each of those groups of units is the surrender of an amount of allowances equal to the state's emissions above the state assurance level multiplied by the group's percentage and multiplied by two (in order to reflect the penalty of two allowances for each ton of the state's excess emissions). EPA implements the assurance penalty provisions through a series of notices of data availability that make available the necessary calculations and provide an opportunity for public objections to the calculations. The requirements that owners and operators comply with the assurance provisions, including where appropriate the assurance penalty, and the procedures followed by the Administrator are set forth in 40 CFR 97.406(c)(2) and 97.425 (for the TR NO<sub>x</sub> annual program), 97.506(c)(2) and 97.525 (for the TR NO<sub>x</sub> ozone season program), 97.606(c)(2) and 97.625 (for the TR SO<sub>2</sub> Group 1 program), and 97.706(c)(2) and 97.725 (for the TR SO<sub>2</sub> Group 2 program).

EPA proposes to determine that amending the assurance provisions to take effect starting in 2014 is appropriate. EPA believes that a limited postponement of the effectiveness of these provisions is justified in order to smooth the transition from the existing CAIR programs to the new Transport Rule programs.

In line with the Court's remand of CAIR, EPA designed the Transport Rule to achieve necessary emission reductions by relevant NAAQS attainment deadlines and to ensure that necessary reductions will be achieved within each covered state. As explained in the final Transport Rule, EPA determined that it was appropriate for the Transport Rule programs to address emissions in 2012 and beyond in order to ensure that the deadlines in the rule were aligned, as legally required, with the downwind nonattainment deadlines (76 FR 48277–48279). CAIR remains in effect to address emissions through the end of the 2011 control periods, and the Transport Rule programs address emissions in 2012 and beyond.

EPA took several steps in the final Transport Rule to ease the transition from the CAIR programs to the Transport Rule trading programs.

The Transport Rule maintains programmatic elements that were successfully implemented and recognizable to sources from compliance experiences under CAIR while also addressing that rule's legal shortcomings identified by the Court. Under both CAIR and the Transport Rule, individual units have the flexibility to supplement their own emission reductions with the acquisition from the marketplace of any additional allowances needed to cover emissions under the Transport Rule programs. Robust markets (*e.g.*, markets with a high level of liquidity and accessibility of price information) for the CAIR annual NO<sub>x</sub>, CAIR ozone-season NO<sub>x</sub>, and Acid Rain (SO<sub>2</sub>) program allowances have been in existence for many years. Sources covered by CAIR have relied on the availability of these robust markets when developing compliance plans. The Transport Rule (TR) creates new TR SO<sub>2</sub> Group 1, TR SO<sub>2</sub> Group 2, TR NO<sub>x</sub>, and TR ozone-season NO<sub>x</sub> allowances. Markets for these allowances are developing now, and EPA is beginning to record the allowances in allowance accounts and introduce the allowances into the marketplace over a year before the Transport Rule programs' first compliance deadlines (December 1, 2012, for the 2012 ozone-season NO<sub>x</sub> program, and March 1, 2013, for the 2012 annual NO<sub>x</sub> and SO<sub>2</sub> programs). However, with the allocation revisions proposed in this rulemaking and the potential for additional revisions based on additional information that might be submitted in response to this rulemaking, some allowances would be recorded and introduced into the marketplace at later dates.

Based on observed compliance planning behavior among sources anticipating the 2012 control periods, and in light of the proposed revisions in this rulemaking and the potential for additional revisions based on additional information, EPA believes that amending the effective date of the assurance provisions to apply in 2014 would ease the transition from CAIR to Transport Rule compliance for parties across the board by promoting the liquidity of, and accessibility of price information in, new Transport Rule allowance markets and instilling confidence that utilities can flexibly comply through a variety of unit-level operational strategies that are not limited by initial Transport Rule unit-level allowance allocations.

EPA believes that this change would accelerate the development of robust Transport Rule allowance markets and facilitate a smooth transition to the Transport Rule programs. If, in response to concerns about when robust markets will develop, utilities were to artificially constrain 2012 operational plans to not exceed initially allocated allowances, the volume of early trading activity might be unnecessarily limited. Early trading activity is important for demonstrating market liquidity and assisting in price discovery to inform compliance planning by affected sources. Actions by utilities to limit early trading activity, therefore, could have negative impacts not only on those utilities, but on all participants in the Transport Rule trading programs. EPA believes that amending the effectiveness of the assurance provisions in 2012 and 2013 would encourage greater confidence among utilities for engaging immediately in cost-effective compliance planning that takes into account the flexibility of a robust market for acquiring allowances to cover emissions to the extent use of allowances is the most economic approach for compliance under the Transport Rule programs.

Amending the assurance provisions would not affect, in any way, the requirements of the rule in 2014 and beyond. EPA is proposing only a short postponement of the assurance penalty provisions to ensure a smooth transition from CAIR to the Transport Rule programs. EPA believes that, notwithstanding postponement of the assurance penalty provisions, the states covered by the Transport Rule programs will still achieve the emission reductions in 2012 and 2013 necessary to eliminate each state's significant contribution to nonattainment and interference with maintenance identified in the final Transport Rule

(with the revisions included in this proposal). The highly detailed state-specific bases on which individual state budgets were determined using the approach and methodologies developed in the final Transport Rule, and included in the record for the Transport Rule, together with the derivation of the variability limits from historic data reflecting state-level year-to-year variation in power sector emissions, support EPA's belief. EPA noted in the Transport Rule proposal that knowledge about installed air pollution control equipment “\* \* \* provides greater certainty of where [near-term] reductions will occur and how these reductions should impact air quality in downwind areas. \* \* \* Consequently, EPA believes that there is a high level of certainty that emissions reductions projected for 2012–2013 with interstate trading would be achieved within the states where they are projected to occur, making imposition of the assurance provisions during 2012–2013 unnecessary” (75 FR 45314–45315).

In the final Transport Rule, EPA did not disavow the proposal's rationale for starting the assurance provisions in 2014; however, the Agency chose to make the assurance provisions effective starting in 2012 with the intent to err on the side of providing “even further assurance” of securing the targeted emission reductions in upwind states (76 FR 48296). EPA, therefore, has never concluded that starting the assurance provisions in 2014 would fail to meet the 110(a)(2)(D) obligation to eliminate significant contribution or interference with maintenance in 2012 and 2013. Moreover, this proposal's revisions to pollution control technology assumptions involve only 17 units of the approximately 3,600 units whose known controls inform the Transport Rule budgets. EPA continues to believe that, because the immediate-term Transport Rule state budgets for 2012 and 2013 (in contrast with the budgets for 2014 and thereafter) are uniquely based on the ability of the known existing fleet of EGUs and known existing or soon-to-be-installed pollution control equipment to deliver emission reductions in specific upwind states, there is a high level of certainty that the state assurance levels will not be exceeded in 2012 and 2013. EPA believes that this near-term certainty allows the Agency to postpone the effectiveness of the Transport Rule's assurance penalty provisions until 2014 without sacrificing the Transport Rule's ability to ensure necessary near-term emission reductions in each upwind state, supported by the calculation of

each upwind state's emission reduction potential (informing the determination of state budgets) under the rule.

With the proposed, temporary postponement of the assurance provisions, EPA believes that, in the near term (as well as in the long term), Transport Rule allowance markets would provide compliance flexibility at the unit level and incentivize cost-effective, unit-level emission reductions. In the aggregate, these flexibilities and reductions at the unit level would result in achievement in each state of the state-level cost-effective emission reductions projected in the final Transport Rule (with the revisions included in this proposal). In other words, EPA is only proposing to postpone temporarily the assurance penalty provisions to address the ability of owners and operators of individual units to make the cost-effective emission reductions in 2012 and 2013 on which EPA's state-level emission projections relied in determining each state's amount of significant contribution and interference with maintenance under the final Transport Rule. Consequently, EPA believes that this proposal to postpone temporarily the assurance provisions will not yield substantially different state-level emission outcomes under the Transport Rule programs in 2012 or 2013 than the state-level emissions reflected in the state-specific budgets and assurance levels in the respective Transport Rule program.

EPA believes that a two year postponement of the effective date of the assurance penalty provisions is sufficient to guarantee robust market development, is consistent with the DC Circuit's decision leaving CAIR in place during the transition to a new rule, and will not interfere with the air quality objectives of the program. EPA does not, at this time, believe a longer postponement would be justified. EPA requests comment on all aspects of this proposal including the length of the postponement.

Since under this proposal, the assurance provisions would continue to be effective for 2014 and thereafter, EPA maintains that the Transport Rule, revised consistent with this proposal, would continue to address and meet the Court's concerns in *North Carolina*.

Any revisions to state budgets from this proposal that are finalized would also include corresponding revisions to the relevant assurance levels that would apply in 2014 with this proposed postponement.

#### D. Correct Typographical Errors

EPA is proposing to correct typographical errors in certain sections

of rule text in parts 52 and 97 in the final Transport Rule. Specifically, EPA proposes to change an erroneous reference in 40 CFR 52.39(i)(1)(ii) to “TR SO<sub>2</sub> Group 1 allowances” to refer instead to “TR SO<sub>2</sub> Group 2 allowances” and to redesignate sections 52.745 and 52.746 in 40 CFR part 52, subpart O as sections 52.731 and 52.732 and redesignate section 52.2241 in 40 CFR part 52, subpart VV as section 52.2441. EPA also proposes to remove some redundant words in 40 CFR 97.406(e)(2), 97.606(e)(2), and 97.706(E)(2). EPA requests comment concerning only the specific corrections and not concerning any other aspect of the provisions in which these corrections would be made.

#### IV. Recordation of Transport Rule Allowances

##### *Impacts on Allocations to Existing Units*

EPA recognizes that successful implementation of the Transport Rule programs in 2012 depends in part on the development of robust allowance markets, in which covered sources can locate and purchase any additional allowances necessary to comply with the rule. As such, EPA intends to allocate as many 2012 Transport Rule allowances as possible as early as possible to assist implementation and compliance planning. While none of the actions presented in this proposal would reduce any state’s total number of allowances issued under that state’s budgets, some of the actions presented in this proposal would slightly alter unit level allocations. For example, as described above, allocations to certain units covered by consent decrees would be limited. EPA does not believe it would be prudent or reasonable to record in allowance accounts, before taking final action on this proposal, allowance allocations in excess of the amount any given unit would receive if this proposal is finalized as proposed. EPA will record by November 7, 2011 for each unit, the lesser of the amount that unit would receive under the allocation scheme finalized in the Transport Rule or the amount the unit would receive if this proposal is finalized as proposed. This approach will allow EPA to allocate over 99.7 percent of all existing unit allowances under the state budgets established in the final Transport Rule by that rule’s November 7 deadline (76 FR 48398, 48424, 48450, and 48475, August 8, 2011). During this timeframe, the only units that will receive substantially fewer allowances under this approach than under the allocations as finalized in the Transport Rule are units already

subject to legally binding consent decrees that limit their emissions; therefore, EPA does not believe this approach will have any negative impact on compliance planning at sources in anticipation of the implementation of the Transport Rule programs. EPA is proposing to allocate the remaining 0.3 percent of the allowances no later than 7 days after finalization of this action is legally effective. In addition, if EPA finalizes the proposed actions that yield increases to state budgets, the Agency will act swiftly to record these additional allowances and thereby put them into the marketplace as quickly as possible following this rule’s finalization, so that the allowances would be available significantly in advance of the compliance deadlines for the 2012 control periods (*i.e.*, the allowance transfer deadlines of December 1, 2012 (for the NO<sub>x</sub> ozone season program) and March 1, 2013 (for the NO<sub>x</sub> and SO<sub>2</sub> annual programs)). See the “Transport Rule Allowance Recordation Schedule TSD” in the docket for this rulemaking for a demonstration of how many allowances EPA will record by November 7, 2011 in each state.

#### V. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This action makes relatively minor revisions to the emission budgets and allowance allocations or allowance allocations only in certain states in the final Transport Rule and corrects minor technical errors which are ministerial. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the final Transport Rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0667. The OMB control numbers

for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

##### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this action are electric power generators whose ultimate parent entity has a total electric output of 4 million megawatt-hours (MWh) or less in the previous fiscal year. We have determined that the changes considered in this proposed rulemaking pose no additional burden for small entities. The proposed revision to the new unit set-asides in Arkansas and Texas would yield an extremely small change in unit-level allowance allocations to existing units, including small entities, such that it would not affect the analysis conducted on small entity impacts under the finalized Transport Rule. In all other states, the revisions proposed in this rulemaking would yield additional allowance allocations to all units, including small entities, without increasing program stringency, such that it is not possible for the impact to small entities to be any larger than that already considered and reviewed in the finalized Transport Rule.

##### *D. Unfunded Mandates Reform Act*

This action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any

one year. This action is increasing the budgets and increasing the total number of allowances or maintaining the same budget but revising unit-level allocations in several other states in the Transport Rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

In developing the final Transport Rule, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments.

#### *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, as specified in Executive Order 13132. This action makes relatively minor revisions to the emissions budgets and allowance allocations or allowance allocations only in certain states in the final Transport Rule. Thus, Executive Order 13132 does not apply to this rule. EPA did provide information to state and local officials during development of both the proposed and final Transport Rule.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action makes relatively minor revisions to the emissions budgets and allowance allocations in several states in the final Transport Rule and helps ease the transition from CAIR. Indian country new unit set-asides will increase slightly or remain unchanged in the states affected by this action. Thus, Executive Order 13175 does not apply to this action. EPA consulted with Tribal officials during the process of promulgating the final Transport Rule to permit them to have meaningful and timely input into its development.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a

disproportionate risk to children. Analyses by EPA that show how the emission reductions from the strategies in the final Transport Rule will further improve air quality and children's health can be found in the final Transport Rule RIA.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA believes that there is no meaningful impact to the energy supply beyond that which is reported for the Transport Rule program in the final Transport Rule.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

As described in section XII.I of the preamble to the final Transport Rule, the Transport Rule program requires all sources to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. This action, however, does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA believes that the vast majority of communities and individuals in areas covered by the Transport Rule program inclusive of this action, including numerous low-income, minority, and Tribal individuals and communities in both rural areas and inner cities in the eastern and central U.S., will see significant improvements in air quality and resulting improvements in health. EPA's assessment of the effects of the final Transport Rule program on these communities is detailed in section XII.J of the preamble to the final Transport Rule.

#### **List of Subjects**

##### *40 CFR Part 52*

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.

##### *40 CFR Part 97*

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 6, 2011.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons set forth in the preamble, parts 52 and 97 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart A—General Provisions**

##### **§ 52.39 [Amended]**

2. In § 52.39 amend paragraph (i)(1)(ii) by removing the words "Group 1" and adding, in their place, the words "Group 2".

**Subpart O—Illinois**

**§ 52.745 [Redesignated as § 52.731]**

3. Section 52.745, as published at 76 FR 48363, August 8, 2011, is redesignated as § 52.731.

**§ 52.746 [Redesignated as § 52.732]**

4. Section 52.746 is redesignated as § 52.732.

**Subpart VV—Virginia**

**§ 52.2241 [Redesignated as § 52.2441]**

5. Section 52.2241, as published at 76 FR 48376, August 8, 2011, is redesignated as § 52.2441.

**PART 97—[AMENDED]**

6. The authority citation for Part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

7. Section 97.406 is amended:  
 a. In paragraph (c)(3) by removing the words “paragraphs (c)(1) and (2)”, adding in their place the words “paragraph (c)(1)” and designating the first sentence as paragraph (c)(3)(i);  
 b. By adding a new paragraph (c)(3)(ii); and  
 c. In paragraph (e)(2) by removing the words “or or” and adding, in their place, the word “or”.

The addition reads as follows:

**§ 97.406 Standard requirements.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) A TR NO<sub>x</sub> Annual unit shall be subject to the requirements under

paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit’s monitor certification requirements under § 97.430(b) and for each control period thereafter.

\* \* \* \* \*

8. Section 97.410 is revised to read as follows:

**§ 97.410 State NO<sub>x</sub> Annual trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.**

(a) The State NO<sub>x</sub> Annual trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR NO<sub>x</sub> Annual allowances for the control periods in 2012 and thereafter are as follows:

State	NO <sub>x</sub> Annual trading budget (tons)* for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama	72,691	1,454	
Georgia	62,010	1,240	
Illinois	47,872	3,830	
Indiana	109,726	3,292	
Iowa	38,335	729	38
Kansas	30,714	583	31
Kentucky	85,086	3,403	
Maryland	16,633	333	
Michigan	65,421	1,243	65
Minnesota	29,572	561	30
Missouri	52,374	1,571	
Nebraska	30,039	1,772	30
New Jersey	7,686	154	
New York	21,028	400	21
North Carolina	50,587	2,984	51
Ohio	92,703	1,854	
Pennsylvania	119,986	2,400	
South Carolina	32,498	617	33
Tennessee	35,703	714	
Texas	134,970	5,264	135
Virginia	33,242	1,662	
West Virginia	59,472	2,974	
Wisconsin	34,101	2,012	34

State	NO <sub>x</sub> Annual trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama	71,962	1,439	
Georgia	40,540	811	
Illinois	47,872	3,830	
Indiana	108,424	3,253	
Iowa	37,498	712	38
Kansas	25,560	485	26
Kentucky	77,238	3,090	
Maryland	16,574	331	
Michigan	63,040	1,198	63
Minnesota	29,572	561	30
Missouri	48,717	1,462	
Nebraska	30,039	1,772	30
New Jersey	7,378	148	
New York	21,028	400	21
North Carolina	41,553	2,451	42
Ohio	87,493	1,750	
Pennsylvania	119,194	2,384	
South Carolina	32,498	617	33
Tennessee	19,337	387	
Texas	134,970	5,264	135



State	NO <sub>x</sub> Annual trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Virginia .....	33,242	1,662	.....
West Virginia .....	54,582	2,729	.....
Wisconsin .....	32,871	1,939	33

\* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State NO<sub>x</sub> Annual trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Alabama .....	12,953
Georgia .....	7,297
Illinois .....	8,617
Indiana .....	19,516
Iowa .....	6,750
Kansas .....	4,601
Kentucky .....	13,903
Maryland .....	2,983
Michigan .....	11,347
Minnesota .....	5,323
Missouri .....	8,769
Nebraska .....	5,407
New Jersey .....	1,328
New York .....	3,785
North Carolina .....	7,480
Ohio .....	15,749
Pennsylvania .....	21,455
South Carolina .....	5,850

State	Variability limits for 2014 and thereafter
Tennessee .....	3,481
Texas .....	24,295
Virginia .....	5,984
West Virginia .....	9,825
Wisconsin .....	5,917

**§ 97.425 [Amended]**

9. Section 97.425 is amended in paragraph (b)(1) by removing the figure "2013" and adding in its place the figure "2015".

10. Section 97.506 is amended:  
 a. In paragraph (c)(3) by removing the words "paragraphs (c)(1) and (2)", adding in their place the words "paragraph (c)(1)" and designating the first sentence as paragraph (c)(3)(i); and  
 b. Adding a new paragraph (c)(3)(ii).  
 The addition reads as follows:

**§ 97.506 Standard requirements.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) A TR NO<sub>x</sub> Ozone Season unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.530(b) and for each control period thereafter.

\* \* \* \* \*

11. Section 97.510 is revised to read as follows:

**§ 97.510 State NO<sub>x</sub> Ozone Season trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.**

(a) The State NO<sub>x</sub> Ozone Season trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR NO<sub>x</sub> Ozone Season allowances for the control periods in 2012 and thereafter are as follows:

State	NO <sub>x</sub> Ozone Season trading budget (tons) * for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama .....	31,746	635	.....
Arkansas .....	15,037	752	.....
Florida .....	28,644	544	29
Georgia .....	27,944	559	.....
Illinois .....	21,208	1,697	.....
Indiana .....	46,876	1,406	.....
Kentucky .....	36,167	1,447	.....
Louisiana .....	17,663	512	18
Maryland .....	7,179	144	.....
Mississippi .....	12,296	234	12
New Jersey .....	3,974	79	.....
New York .....	10,242	195	10
North Carolina .....	22,168	1,308	22
Ohio .....	40,063	801	.....
Pennsylvania .....	52,201	1,044	.....
South Carolina .....	13,909	264	14
Tennessee .....	14,908	298	.....
Texas .....	64,418	2,513	64
Virginia .....	14,452	723	.....
West Virginia .....	25,283	1,264	.....

State	NO <sub>x</sub> Ozone Season trading budget (tons) * for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama .....	31,499	630	.....
Arkansas .....	15,037	752	.....
Florida .....	27,825	529	28
Georgia .....	18,279	366	.....
Illinois .....	21,208	1,697	.....
Indiana .....	46,175	1,385	.....
Kentucky .....	32,674	1,307	.....

State	NO <sub>x</sub> Ozone Season trading budget (tons) * for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Louisiana .....	17,663	512	18
Maryland .....	7,179	144	
Mississippi .....	12,296	234	12
New Jersey .....	3,577	72	
New York .....	10,242	195	10
North Carolina .....	18,455	1,089	18
Ohio .....	37,792	756	
Pennsylvania .....	51,912	1,038	
South Carolina .....	13,909	264	14
Tennessee .....	8,016	160	
Texas .....	64,418	2513	64
Virginia .....	14,452	723	
West Virginia .....	23,291	1,165	

\* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State NO<sub>x</sub> Ozone Season trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Alabama .....	6,615
Arkansas .....	3,158
Florida .....	5,843
Georgia .....	3,839
Illinois .....	4,454
Indiana .....	9,697
Kentucky .....	6,862
Louisiana .....	3,709
Maryland .....	1,508
Mississippi .....	2,582
New Jersey .....	751
New York .....	2,151
North Carolina .....	3,876
Ohio .....	7,936
Pennsylvania .....	10,902
South Carolina .....	2,921
Tennessee .....	1,683
Texas .....	13,528
Virginia .....	3,035

State	Variability limits for 2014 and thereafter
West Virginia .....	4,891

**§ 97.525 [Amended]**

12. Section 97.525 is amended in paragraph (b)(1) by removing the figure "2013" and adding in its place the figure "2015".

13. Section 97.606 is amended:  
 a. In paragraph (c)(3) by removing the words "paragraphs (c)(1) and (2)" and adding in their place the words "paragraph (c)(1)" and designating the first sentence as paragraph (c)(3)(i);  
 b. By adding a new paragraph (c)(3)(ii); and  
 c. In paragraph (e)(2) by removing the words "or or" and adding, in their place, the word "or".

The addition reads as follows:

**§ 97.606 Standard requirements.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) A TR SO<sub>2</sub> Group 1 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.630(b) and for each control period thereafter.

\* \* \* \* \*

14. Section 97.610 is revised to read as follows:

**§ 97.610 State SO<sub>2</sub> Group 1 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.**

(a) The State SO<sub>2</sub> Group 1 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR SO<sub>2</sub> Group 1 allowances for the control periods in 2012 and thereafter are as follows:

State	SO <sub>2</sub> Group 1 trading budget (tons) * for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Illinois .....	234,889	11,744	
Indiana .....	285,424	8,563	
Iowa .....	107,085	2,035	107
Kentucky .....	232,662	13,960	
Maryland .....	30,120	602	
Michigan .....	229,303	4,357	229
Missouri .....	207,466	4,149	
New Jersey .....	7,670	153	
New York .....	30,852	586	31
North Carolina .....	136,881	10,813	137
Ohio .....	310,230	6,205	
Pennsylvania .....	278,651	5,573	
Tennessee .....	148,150	2,963	
Virginia .....	70,820	2,833	
West Virginia .....	146,174	10,232	
Wisconsin .....	79,480	3,099	80

State	SO <sub>2</sub> Group 1 trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Illinois	124,123	6,206	
Indiana	161,111	4,833	
Iowa	75,184	1,429	75
Kentucky	106,284	6,377	
Maryland	28,203	564	
Michigan	143,995	2,736	144
Missouri	165,941	3,319	
New Jersey	5,574	111	
New York	22,112	420	22
North Carolina	57,620	4,552	58
Ohio	137,077	2,742	
Pennsylvania	112,021	2,240	
Tennessee	58,833	1,177	
Virginia	35,057	1,402	
West Virginia	75,668	5,297	
Wisconsin	47,883	1867	48

\* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State SO<sub>2</sub> Group 1 trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Illinois	22,342
Indiana	29,000
Iowa	13,533
Kentucky	19,131
Maryland	5,077
Michigan	25,919
Missouri	29,869
New Jersey	1,003
New York	3,980
North Carolina	10,372
Ohio	24,674
Pennsylvania	20,164
Tennessee	10,590
Virginia	6,310
West Virginia	13,620
Wisconsin	8,619

**§ 97.625 [Amended]**

15. Section 97.625 is amended in paragraph (b)(1) by removing the figure "2013" and adding in its place the figure "2015".

16. Section 97.706 is amended:

- a. In paragraph (c)(3) by removing the words "paragraphs (c)(1) and (2)" and adding in their place the words "paragraph (c)(1)" and designating the first sentence as paragraph (c)(3)(i);
- b. By adding a new paragraph (c)(3)(ii); and
- c. In paragraph (e)(2) by removing the words "or or" and adding, in their place, the word "or".

The addition reads as follows:

**§ 97.706 Standard requirements.**

- \* \* \* \* \*
- (c) \* \* \*
- (3) \* \* \*

(ii) A TR SO<sub>2</sub> Group 2 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.730(b) and for each control period thereafter.

\* \* \* \* \*

14. Section 97.710 is revised to read as follows:

**§ 97.710 State SO<sub>2</sub> Group 2 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.**

(a) The State SO<sub>2</sub> Group 2 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR SO<sub>2</sub> Group 2 allowances for the control periods in 2012 and thereafter are as follows:

State	SO <sub>2</sub> Group 2 trading budget (tons) * for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama	216,033	4,321	
Georgia	158,527	3,171	
Kansas	41,528	789	42
Minnesota	41,981	798	42
Nebraska	65,052	2,537	65
South Carolina	88,620	1,683	89
Texas	314,021	15,387	314

State	SO <sub>2</sub> Group 2 trading budget (tons) * for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama	213,258	4,265	
Georgia	95,231	1,905	
Kansas	41,528	789	42
Minnesota	41,981	798	42
Nebraska	65,052	2,537	65
South Carolina	88,620	1,683	89

State	SO <sub>2</sub> Group 2 trading budget (tons) * for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Texas .....	314,021	15,387	314

\* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State SO<sub>2</sub> Group 2 trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Alabama .....	38,386
Georgia .....	17,142
Kansas .....	7,475
Minnesota .....	7,557
Nebraska .....	11,709
South Carolina .....	15,952
Texas .....	56,524

15. Section 97.725 is amended by, in paragraph (b)(1), removing the word "2013" and adding, in its place, the word "2015".

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-HQ-OAR-2010-0750; FRL-9477-1]

RIN 2060-AQ10

**New Source Performance Standards Review for Nitric Acid Plants**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing revisions to the new source performance standards (NSPS) for nitric acid plants. Nitric acid plants include one or more nitric acid production units. These proposed revisions include a change to the nitrogen oxides (NO<sub>x</sub>) emission limit, which applies to each nitric acid production unit commencing construction, modification, or reconstruction after October 14, 2011. These proposed revisions will also include additional testing and monitoring requirements.

**DATES:** Comments must be received on or before November 28, 2011. Under the Paperwork Reduction Act, 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 November 14, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0750, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web site:* <http://www.epa.gov/oar/docket.html>. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include EPA-HQ-OAR-2010-0750 in the subject line of the message.
- *Fax:* Fax your comments to: (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2010-0750.
- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, *Attention:* Docket ID No. EPA-HQ-OAR-2010-0750. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

• *Hand Delivery or Courier:* In person or by courier, deliver comments to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket Center's normal hours of operation, (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and will be made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "General Information" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about these proposed standards for nitric acid production units, contact Mr. Chuck French, Sector