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40 CFR Part 97

Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[EPA-HQ-OAR-2009-0491; FRL-9632-8]

RIN 2060-AR35

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on additional revisions to the final Transport Rule (Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals published August 8, 2011). In the proposed Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, published October 14, 2011, EPA sought additional comment on unit-level operational information similar to the information supporting the proposed revisions, which specifically addressed post-combustion pollution control equipment and immediate-term operational requirements necessitating non-economic generation based on verifiable data. Based on comments received, EPA is finalizing adjustments that result in revisions to 2012 and 2014 state budgets in Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas, and revisions to new unit set-asides in Arkansas, Louisiana, and Missouri.¹

DATES: This rule is effective on May 21, 2012 without further notice, unless EPA receives significant adverse comments by March 22, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register**.

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 www.regulations.gov or email. 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 email comment directly to EPA without going through www.regulations.gov your email 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, email at stevens.gabrielle@epa.gov. Electronic copies of this document can be accessed through the EPA Web site at: <http://epa.gov/airmarkets>.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, elsewhere in this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule if significant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

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:

¹ Throughout this preamble, EPA refers to a state budget for 2012 and 2013 as a "2012" state budget and refers to a state budget for 2014 and thereafter as a "2014" state budget. Therefore, any revision of a 2012 state budget would apply to the state budget for 2012 and 2013, and any revision of a 2014 state budget would apply to the state budget for 2014 and thereafter.

| 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.

I. Detailed Discussion of Corresponding Rule Revisions

EPA has determined that the following additional corrections are needed to the August 8, 2011 final Transport Rule, as a result of comments received on the proposed rule, Revisions to Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (76 FR 63860, October 14, 2011) (Revisions Rule). In that proposed rule, EPA took comment on several similar corrections and demonstrated a consistent methodology for calculating those corrections. EPA received no comments opposing the proposal to make these corrections to state budgets and new unit set-asides, and EPA received very few comments addressing the manner in which the corrections were quantified, to which EPA responded in the final revisions rule. EPA has calculated the corrections in this rulemaking in a fully consistent manner with the approach developed through public comment on the proposed and finalized revisions rule. See the “Final Revisions Rule State Budgets and New Unit Set-Asides” Technical Support Document (TSD) in the docket for this rulemaking for a quantitative demonstration of these revisions. For quantitative assessments of the relationship between final revisions to the Transport Rule and the original analysis, also see “Final Revisions Rule Significant Contribution Assessment” TSD in the docket for this rulemaking. The “Final Revisions Rule Unit-Level Allocations under the FIPs,” also in the docket for this rulemaking,

present unit-level allocations under the FIPs.

(1) Revise the Arkansas ozone season NO_x budgets for 2012 and 2014 and correct the ozone season new unit set-aside budget for an omitted planned facility.

EPA is increasing the Arkansas 2012 and 2014 ozone-season NO_x budget based upon comments received that demonstrate that the McClellan plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation.²

EPA re-calculated the emissions from the McClellan plant with non-economic generation to account for the input assumption changes. These calculations yield increases to the Arkansas 2012 and 2014 state budgets for ozone-season NO_x of 73 tons. Comments on the revisions rule identified Turk Unit 1 as commencing commercial operation on or after January 1, 2010, qualifying it as 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_x new unit set-aside. EPA is therefore revising the portion of the Arkansas ozone-season budget dedicated to the state’s new unit set-aside account so that it takes into account this unit’s projected emissions, consistent with the new unit set-aside methodology in the final Transport Rule. EPA is only applying this revision for 2014 and beyond, because the Agency has already recorded (i.e., distributed) allowances under the Arkansas state budget for the 2012 and 2013 control periods. Turk Unit 1 remains eligible to request allowance allocation from the new unit set-asides for any control period under the program. This revision yields an ozone-season NO_x new unit set-aside of 8 percent for 2014 and beyond for Arkansas. This revision to the Arkansas new unit set-aside necessitates changes to allowance allocations to existing units in 2014 and beyond.

² In the proposed revisions rule, EPA characterized an out-of-merit-order dispatch area as one in which “units * * * 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.” (76 FR 63865)

(2) Revise the Georgia SO₂, annual NO_x, and ozone season NO_x budgets for 2014.

In the final Transport Rule, EPA explained its intent to capture “reductions that occur due to state rules, consent decrees, and other planned changes in generation patterns that occur after 2012, but during or prior to 2014” in the 2014 state budgets (76 FR 48261). Commenters on the revisions rule noted that EPA inadvertently included pollution control installation requirements from a Georgia state rule whose deadlines at certain units actually extend beyond 2014. To correct the alignment of the Georgia 2014 state budgets with the requirements for affected units in Georgia to install controls by the state rule’s deadlines, EPA is increasing Georgia’s 2014 state budgets by 40,334 tons of SO₂, 13,198 tons of annual NO_x, and 5,762 tons of ozone-season NO_x.

(3) Revise the Indiana SO₂ budgets for 2012 and 2014.

EPA is revising the Indiana 2012 and 2014 annual SO₂ budgets based on comments received on the proposed revisions rule (76 FR 63860, October 14, 2011) regarding post-combustion control status at Gallagher Units 2 and 4. Commenters identified an erroneous assumption of flue gas desulphurization (FGD, or scrubber) with 86 percent removal at units that have actually installed dry sorbent injection (DSI) technology with a 60 percent removal rate and an emission rate limit of 0.8 lbs/mmBtu established in a NSR settlement agreement. EPA has recalculated the projected emissions at these units, and that recalculation supports a 3,465 ton increase in the state’s annual SO₂ budget.

Commenters on the revisions rule also identified a facility in Indiana, Gibson Unit 5, which currently faces immediate-term limitations regarding the amount of flue gas that can be treated in its existing FGD. In the final Transport Rule analysis, EPA relied on the SO₂ removal efficiency that this facility reported at its scrubber to the Energy Information Administration (EIA). However, EPA has since determined that this reported value only intended to address the removal efficiency for the portion of the flue gas treated in the scrubber. EPA has recalculated the projected emissions for this unit using the most recent data reported by this facility to EIA on form

860 for 2009, which includes the scrubber's removal efficiency and the portion of flue gas treated. This recalculation supports an increase to Indiana's 2012 and 2014 SO₂ budget of an additional 1,873 tons (5,338 tons total).

(4) Revise the Kansas SO₂ and annual NO_x budgets for 2012 and 2014.

Commenters on the revisions rule provided information showing that one unit at the Quindaro plant in Kansas is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA re-calculated the emissions from this plant with non-economic generation to account for the input assumption changes. These calculations yield increases to the Kansas 2012 and 2014 state budgets for annual SO₂ of 452 tons and annual NO_x of 640 tons.

In the final Transport Rule, EPA explained its intent to capture "reductions that occur due to state rules, consent decrees, and other planned changes in generation patterns that occur after 2012, but during or prior to 2014" in the 2014 state budgets (76 FR 48261). Commenters on the revisions rule noted that EPA inadvertently included an emission rate requirement from a consent decree affecting a Kansas facility whose deadline actually extends beyond 2014. To correct the alignment of the Kansas 2014 state budget with the requirements for affected units in Kansas to meet the emission rate limitation by the consent decree's deadlines, EPA is increasing the Kansas 2014 annual NO_x budget by an additional 5,154 tons (5,794 tons total).

(5) Revise the Louisiana ozone season NO_x budgets for 2012 and 2014 and adjust the ozone season new unit set-aside.

EPA is increasing the Louisiana 2012 and 2014 ozone-season NO_x budgets based on comments received on the revisions rule demonstrating that the Stall and Lieberman plants are in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA re-calculated the emissions from the Stall and Lieberman plants with non-economic generation to account for the input assumption changes. These calculations yield increases to Louisiana's 2012 and 2014 state budgets for ozone-season NO_x of 89 tons.

Comments on the revisions rule also noted that in calculating the Louisiana ozone-season NO_x new unit set-aside, EPA included projected emissions from a planned new facility, Washington Parish, which will not in fact come into

service in Louisiana. EPA is therefore reducing the size of Louisiana's ozone-season NO_x new unit set-aside in 2012 and 2014 to 2 percent (from the previous 3 percent) to account for the exclusion of these projected emissions from the relevant calculation. This revision means that fewer allowances will need to be held in reserve for the new unit set-aside; after this revision's effective date, EPA will reallocate any allowances in excess of the revised new unit set-aside to existing units in the state by the same existing unit allowance allocation methodology as previously finalized.

(6) Revise the Mississippi ozone season NO_x budgets for 2012 and 2014.

EPA is increasing the Mississippi 2012 and 2014 ozone-season NO_x budgets based on comments received on the revisions rule demonstrating that the Moselle plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation.

EPA re-calculated the emissions from the Moselle plant with non-economic generation to account for the input assumption changes. These calculations yield increases to Mississippi's 2012 and 2014 state budgets for ozone-season NO_x of 115 tons.

(7) Revise the Missouri annual and ozone season NO_x budgets for 2012 and 2014 and correct the SO₂, annual NO_x, and ozone season NO_x new unit set-aside budgets for an omitted operating new facility.

EPA is increasing the Missouri 2012 and 2014 annual and ozone-season NO_x budgets to account for operational constraints at six plants based upon comments received on the revisions rule. The commenters provided information showing that these units were in out-of-merit-order dispatch areas with conditions likely to necessitate what would otherwise be non-economic generation.

EPA re-calculated the emissions from these six plants with non-economic generation to account for the input assumption changes. These calculations yield increases to Missouri's 2012 and 2014 state budgets for annual NO_x of 26 tons and ozone-season NO_x of 26 tons.

Comments on the revisions rule identified Iatan Unit 2 as commencing commercial operation on or after January 1, 2010, qualifying it as 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 Missouri's new unit set-asides. EPA is therefore revising the portion of Missouri's SO₂, annual NO_x, and ozone-

season NO_x budgets dedicated to the state's new unit set-asides so that they take into account this unit's projected emissions, consistent with the new unit set-aside methodology in the final Transport Rule. EPA is only applying this revision for 2013 and beyond, because the Agency has already recorded (i.e., distributed) allowances under the Missouri state budget for the 2012 control period. Iatan Unit 2 remains eligible to request allowance allocation from the new unit set-asides for any control period under the program. This revision yields an ozone-season NO_x new unit set-aside of 6 percent, an annual NO_x new unit set-aside of 6 percent, and an SO₂ new unit set-aside of 3 percent for 2013 and beyond for Missouri. This revision to Missouri's new unit set-aside necessitates changes to allowance allocations to existing units in 2013 and beyond.

(8) Revise the Ohio SO₂, annual NO_x, and ozone season NO_x budgets for 2012 and 2014.

EPA is increasing Ohio's 2012 and 2014 annual SO₂, annual NO_x, and ozone-season NO_x budgets to account for operational constraints at two plants, Conesville and Muskingum River, based on comments received on the revisions rule. The commenter provided information showing that these plants were in out-of-merit-order dispatch areas with conditions likely to necessitate what would otherwise be non-economic generation.

EPA re-calculated the emissions from these two plants with non-economic generation to reflect the input assumption changes. These calculations yield increases to Ohio's 2012 and 2014 state budgets for annual SO₂ of 5,163 tons, annual NO_x of 547 tons, and ozone-season NO_x of 257 tons.

EPA is finalizing additional adjustments to Ohio's 2012 and 2014 annual and ozone-season NO_x budgets to correct an erroneous assumption of an SCR at Bayshore 4. There is no SCR planned or under construction at this facility. This results in an additional 2,218 ton increase (2,765 ton total) in the state's annual NO_x budget and a 964 ton increase (1,221 ton total) for the ozone-season NO_x budget.

(9) Revise the Nebraska SO₂ budgets for 2012 and 2014.

EPA is finalizing revisions to the Nebraska 2012 and 2014 SO₂ budgets, based on comments on the revisions rule, to correct assumptions regarding FGD pollution control technology at Whelan Energy Center Units 1 and 2 and Nebraska City Unit 2. The commenter noted that the technology at Nebraska Unit 2 and Whelan Unit 2 is

dry FGD technology, whereas EPA had assumed wet FGD technology with a higher SO₂ removal efficiency than the actual dry FGD technology that those units achieve. Additionally, EPA is also revising its assumption of FGD technology at Whelan Energy Center Unit 1. There is no FGD present, planned, or under construction at the unit. These adjustments result in an increase of 3,110 tons to the 2012 and 2014 annual SO₂ budgets for the state.

(10) Revise the New York SO₂, annual NO_x, and ozone season NO_x budgets for 2012 and 2014.

EPA is increasing New York's 2012 and 2014 annual SO₂, annual NO_x, and ozone-season NO_x budgets based on comments received on the revisions rule demonstrating that the East River plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA re-calculated the emissions from this facility with out-of-merit-order dispatch to reflect the input assumption changes. These calculations yield increases to New York's 2012 and 2014 state budgets for annual SO₂ of 84 tons, annual NO_x of 694 tons, and ozone-season NO_x of 127 tons.

EPA is also finalizing an adjustment of 5,360 tons to New York's 2012 and 2014 SO₂ budgets based on comments received on the revisions rule. Commenters identified two facilities, Dunkirk and Huntley, with existing dry sorbent injection (DSI) technology for which EPA had assumed an SO₂ removal rate of 70 percent but which actually achieves a removal rate of only 53 percent. EPA recalculated the projected emissions for these units based on this revised assumption and is increasing the New York 2012 and 2014 SO₂ budgets accordingly.

(11) Revise the Oklahoma ozone-season NO_x budgets for 2013 and 2014.

EPA is increasing the Oklahoma 2013³ and 2014 ozone-season NO_x budget based upon comments received on the revisions rule demonstrating that the Comanche plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation.

EPA re-calculated the emissions from the Comanche plant with non-economic generation to account for the input assumption changes. These calculations yield increases to the Oklahoma 2013

and 2014 state budgets for ozone-season NO_x of 859 tons.

(12) Revise the South Carolina SO₂ budgets for 2012 and 2014.

EPA is finalizing an 8,013 ton increase to South Carolina's 2012 and 2014 annual SO₂ budgets based on comments received on the revision rule regarding post-combustion control technology at three units. This action revises the assumption of an FGD at the W S Lee Facility. There are no FGDs planned, under construction, or expected to be online in 2012 or 2014 at this facility.

(13) Revise the Texas annual NO_x and ozone season NO_x budgets for 2012 and 2014.

EPA is increasing the Texas 2012 and 2014 annual and ozone-season NO_x budgets to account for operational constraints at six plants based on comments received on the revisions rule: Jones, Moore County, Nichols, Plant X, Knox Lee, and Wilkes. The commenters provided information showing that these plants were in out-of-merit-order dispatch areas with conditions likely to necessitate what would otherwise be non-economic generation.

EPA re-calculated the emissions from these plants with non-economic generation to account for the input assumption changes. These calculations yield increases to the Texas 2012 and 2014 state budgets for annual NO_x of 2,731 tons, and ozone-season NO_x of 1,142 tons.

II. 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 this 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 this 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, Missouri, 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.

³ These changes do not apply to the Oklahoma 2012 budget because similar changes were already made to the affected units' operation in 2012, as described in the Technical Support Document "Determination of State Budgets for the Final Ozone Supplemental of the Transport Rule" (EPA-HQ-OAR-2009-0491-485, pg. 5-7).

D. Unfunded Mandates Reform Act

This rule 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 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 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.

In the Final Revisions Rule Significant Contribution Assessment Technical Support Document in the docket to this rulemaking, EPA assessed impacts of the emission changes in this rule on air quality throughout the Transport Rule region. For SO₂, the estimated air quality impacts were minimal and no additional nonattainment or maintenance areas were identified. EPA also assessed the relationship between the NO_x emission inventories in each affected state and the finalized revisions to annual and ozone-season NO_x budgets and found the revisions represent small percentages of each state's total emissions in 2014. As a result, EPA does not believe these technical revisions would affect any of the conclusions supported by the air quality and environmental justice analyses conducted for the final Transport Rule.

Based on the significant contribution assessment in the technical support document for this action, 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 available in section XII.J of the preamble to the final Transport Rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 23, 2012.

L. Judicial Review

Petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by April 23, 2012. Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

In the final Transport Rule, EPA determined that "[a]ny final action related to the Transport Rule is 'nationally applicable' within the meaning of section 307(b)(1)." 76 FR 48,352. Through this rule, EPA is revising specific aspects of the final Transport Rule. This rule therefore is a final action related to the Transport Rule and as such is covered by the determination of national applicability made in the final Transport Rule. Thus, pursuant to section 307(b) any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**. Filing a petition for reconsideration of this action does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and

shall not postpone the effectiveness of such rule or action. In addition, pursuant to CAA section 307(b)(2) this action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 97

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

Dated: February 7, 2012.

Lisa P. Jackson,
Administrator.

For the reasons set forth in the preamble, part 97 of chapter I of title 40 of the Code of Federal Regulations, as amended elsewhere in this issue, is further amended as follows:

PART 97—FEDERAL NO_x BUDGET TRADING PROGRAM AND CAIR NO_x AND SO₂ TRADING PROGRAMS

■ 1. 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.*

■ 2. Section 97.410 is amended by:

■ a. Revising paragraphs (a)(2)(iv) and (v);

■ b. Revising paragraph (a)(6), (11), (14), (16), and (20); and

■ c. Revising paragraphs (b)(2), (6), (11), (14), (16) and (20) to read as follows:

§ 97.410 State NO_x Annual trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) * * *

(2) * * *

(iv) The NO_x annual trading budget for 2014 and thereafter is 53,738 tons.

(v) The NO_x annual new unit set-aside for 2014 and thereafter is 1,075 tons.

(vi) * * *

* * * * *

(6) *Kansas.* (i) The NO_x annual trading budget for 2012 and 2013 is 31,354 tons.

(ii) The NO_x annual new unit set-aside for 2012 and 2013 is 596 tons.

(iii) The NO_x annual Indian country new unit set-aside for 2012 and 2013 is 31 tons.

(iv) The NO_x annual trading budget for 2014 and thereafter is 31,354 tons.

(v) The NO_x annual new unit set-aside for 2014 and thereafter is 596 tons.

(vi) The NO_x annual Indian country new unit set-aside for 2014 and thereafter is 31 tons.

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(11) *Missouri.* (i) The NO_x annual trading budget for 2012 and 2013 is 52,400 tons.

(ii) The NO_x annual new unit set-aside for 2012 is 1,572 tons and for 2013 is 3,144 tons.

(iii) [Reserved]

(iv) The NO_x annual trading budget for 2014 and thereafter is 48,743 tons.

(v) The NO_x annual new unit set-aside for 2014 and thereafter is 2,925 tons.

(vi) [Reserved]

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(14) *New York.* (i) The NO_x annual trading budget for 2012 and 2013 is 21,722 tons.

(ii) The NO_x annual new unit set-aside for 2012 and 2013 is 412 tons.

(iii) The NO_x annual Indian country new unit set-aside for 2012 and 2013 is 22 tons.

(iv) The NO_x annual trading budget for 2014 and thereafter is 21,722 tons.

(v) The NO_x annual new unit set-aside for 2014 and thereafter is 412 tons.

(vi) The NO_x annual Indian country new unit set-aside for 2014 and thereafter is 22 tons.

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(16) *Ohio.* (i) The NO_x annual trading budget for 2012 and 2013 is 95,468 tons.

(ii) The NO_x annual new unit set-aside for 2012 and 2013 is 1,909 tons.

(iii) [Reserved]

(iv) The NO_x annual trading budget for 2014 and thereafter is 90,258 tons.

(v) The NO_x annual new unit set-aside for 2014 and thereafter is 1,805 tons.

(vi) [Reserved]

* * * * *

(20) *Texas.* (i) The NO_x annual trading budget for 2012 and 2013 is 137,701 tons.

(ii) The NO_x annual new unit set-aside for 2012 and 2013 is 5,370 tons.

(iii) The NO_x annual Indian country new unit set-aside for 2012 and 2013 is 138 tons.

(iv) The NO_x annual trading budget for 2014 and thereafter is 137,701 tons.

(v) The NO_x annual new unit set-aside for 2014 and thereafter is 5,370 tons.

(vi) The NO_x annual Indian country new unit set-aside for 2014 and thereafter is 138 tons.

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(b) * * *

(2) The NO_x annual variability limit for Georgia is 9,673 tons.

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(6) The NO_x annual variability limit for Kansas is 5,644 tons.

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(11) The NO_x annual variability limit for Missouri is 8,774 tons.

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(14) The NO_x annual variability limit for New York is 3,910 tons.

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(16) The NO_x annual variability limit for Ohio is 16,246 tons.

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(20) The NO_x annual variability limit for Texas is 24,786 tons.

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■ 2. Section 97.510 is amended by:

- a. Revising paragraph (a)(2);
- b. Revising paragraphs (a)(4)(iv) and (v);
- c. Revising paragraphs (a)(9), (12), (13), (15), (17), (18), and (22); and
- d. Revising paragraphs (b)(2), (4), (9), (12), (13), (15), (17), (18), and (22) to read as follows:

§ 97.510 State NO_x Ozone Season trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) * * *

(2) *Arkansas.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 15,110 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 and 2013 is 756 tons.

(iii) [Reserved]

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 15,110 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 1,209 tons.

(vi) [Reserved]

* * * * *

(4) * * *

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 24,041 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 481 tons.

(vi) * * *

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(9) *Louisiana.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 18,115 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 and 2013 is 344 tons.

(iii) The NO_x ozone season Indian country new unit set-aside for 2012 and 2013 is 18 tons.

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 18,115 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 344 tons.

(vi) The NO_x ozone season Indian country new unit set-aside for 2014 and thereafter is 18 tons.

* * * * *

(12) *Mississippi.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 12,429 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 and 2013 is 237 tons.

(iii) The NO_x ozone season Indian country new unit set-aside for 2012 and 2013 is 12 tons.

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 12,429 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 237 tons.

(vi) The NO_x ozone season Indian country new unit set-aside for 2014 and thereafter is 12 tons.

(13) *Missouri.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 22,788 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 is 684 tons and for 2013 is 1,367 tons.

(iii) [Reserved]

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 21,099 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 1,266 tons.

(vi) [Reserved]

* * * * *

(15) *New York.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 10,369 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 and 2013 is 197 tons.

(iii) The NO_x ozone season Indian country new unit set-aside for 2012 and 2013 is 10 tons.

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 10,369 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 197 tons.

(vi) The NO_x ozone season Indian country new unit set-aside for 2014 and thereafter is 10 tons.

* * * * *

(17) *Ohio.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 41,284 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 and 2013 is 826 tons.

(iii) [Reserved]

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 39,013 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 780 tons.

(vi) [Reserved]

(18) *Oklahoma.* (i) The NO_x ozone season trading budget for 2012 is 36,567 tons and for 2013 is 22,694 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 is 731 tons and for 2013 is 454 tons.

(iii) [Reserved]

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 22,694 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 454 tons.

(vi) [Reserved]

* * * * *

(22) *Texas.* (i) The NO_x ozone season trading budget for 2012 and 2013 is 65,560 tons.

(ii) The NO_x ozone season new unit set-aside for 2012 and 2013 is 2,556 tons.

(iii) The NO_x ozone season Indian country new unit set-aside for 2012 and 2013 is 66 tons.

(iv) The NO_x ozone season trading budget for 2014 and thereafter is 65,560 tons.

(v) The NO_x ozone season new unit set-aside for 2014 and thereafter is 2,556 tons.

(vi) The NO_x ozone season Indian country new unit set-aside for 2014 and thereafter is 66 tons.

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(b) * * *

(2) The NO_x ozone season variability limit for Arkansas is 3,173 tons.

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(4) The NO_x ozone season variability limit for Georgia is 5,049 tons.

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(9) The NO_x ozone season variability limit for Louisiana is 3,804 tons.

* * * * *

(12) The NO_x ozone season variability limit for Mississippi is 2,610 tons.

(13) The NO_x ozone season variability limit for Missouri is 4,431 tons.

* * * * *

(15) The NO_x ozone season variability limit for New York is 2,177 tons.

* * * * *

(17) The NO_x ozone season variability limit for Ohio is 8,193 tons.

(18) The NO_x ozone season variability limit for Oklahoma is 4,766 tons.

* * * * *

(22) The NO_x ozone season variability limit for Texas is 13,768 tons.

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■ 3. Section 97.610 is amended by revising:

- a. Paragraph (a)(2);
- b. Paragraphs (a)(7)(ii) and (v);
- c. Paragraphs (a)(9) and (11); and
- d. Paragraphs (b)(2), (9), and (11) to read as follows:

§ 97.610 State SO₂ Group 1 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) * * *

(2) *Indiana.* (i) The SO₂ trading budget for 2012 and 2013 is 290,762 tons.

(ii) The SO₂ new unit set-aside for 2012 and 2013 is 8,723 tons.

(iii) [Reserved]

(iv) The SO₂ trading budget for 2014 and thereafter is 166,449 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 4,993 tons.

(vi) [Reserved]

* * * * *

(7) * * *

(ii) The SO₂ new unit set-aside for 2012 is 4,149 tons and for 2013 is 6,224 tons.

* * * * *

(v) The SO₂ new unit set-aside for 2014 and thereafter is 4,978 tons.

(vi) * * *

* * * * *

(9) *New York*. (i) The SO₂ trading budget for 2012 and 2013 is 36,296 tons.

(ii) The SO₂ new unit set-aside for 2012 and 2013 is 690 tons.

(iii) The SO₂ Indian country new unit set-aside for 2012 and 2013 is 36 tons.

(iv) The SO₂ trading budget for 2014 and thereafter is 27,556 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 523 tons.

(vi) The SO₂ Indian country new unit set-aside for 2014 and thereafter is 28 tons.

* * * * *

(11) *Ohio*. (i) The SO₂ trading budget for 2012 and 2013 is 315,393 tons.

(ii) The SO₂ new unit set-aside for 2012 and 2013 is 6,308 tons.

(iii) [Reserved]

(iv) The SO₂ trading budget for 2014 and thereafter is 142,240 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 2,845 tons.

(vi) [Reserved]

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(b) * * *

(2) The SO₂ variability limit for Indiana is 29,961 tons.

* * * * *

(9) The SO₂ variability limit for New York is 4,960 tons.

* * * * *

(11) The SO₂ variability limit for Ohio is 25,603 tons.

* * * * *

■ 4. Section 97.710 is amended by:

■ a. Revising paragraphs (a)(2)(iv) and (v);

■ b. Revising paragraphs (a)(3), (5), and (6); and

■ c. Revising paragraphs (b)(2), (3), (5), and (6) to read as follows:

§ 97.710 State SO₂ Group 2 trading budget, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) * * *

(2) * * *

(iv) The SO₂ trading budget for 2014 and thereafter is 135,565 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 2,711 tons.

(vi) * * *

(3) *Kansas*. (i) The SO₂ trading budget for 2012 and 2013 is 41,980 tons.

(ii) The SO₂ new unit set-aside for 2012 and 2013 is 798 tons.

(iii) The SO₂ Indian country new unit set-aside for 2012 and 2013 is 42 tons.

(iv) The SO₂ trading budget for 2014 and thereafter is 41,980 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 798 tons.

(vi) The SO₂ Indian country new unit set-aside for 2014 and thereafter is 42 tons.

* * * * *

(5) *Nebraska*. (i) The SO₂ trading budget for 2012 and 2013 is 68,162 tons.

(ii) The SO₂ new unit set-aside for 2012 and 2013 is 2,658 tons.

(iii) The SO₂ Indian country new unit set-aside for 2012 and 2013 is 68 tons.

(iv) The SO₂ trading budget for 2014 and thereafter is 68,162 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 2,658 tons.

(vi) The SO₂ Indian country new unit set-aside for 2014 and thereafter is 68 tons.

(6) *South Carolina*. (i) The SO₂ trading budget for 2012 and 2013 is 96,633 tons.

(ii) The SO₂ new unit set-aside for 2012 and 2013 is 1,836 tons.

(iii) The SO₂ Indian country new unit set-aside for 2012 and 2013 is 97 tons.

(iv) The SO₂ trading budget for 2014 and thereafter is 96,633 tons.

(v) The SO₂ new unit set-aside for 2014 and thereafter is 1,836 tons.

(vi) The SO₂ Indian country new unit set-aside for 2014 and thereafter is 97 tons.

* * * * *

(b) * * *

(2) The SO₂ variability limit for Georgia is 24,402 tons.

(3) The SO₂ variability limit for Kansas is 7,556 tons.

* * * * *

(5) The SO₂ variability limit for Nebraska is 12,269 tons.

(6) The SO₂ variability limit for South Carolina is 17,394 tons.

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