

Environmental Protection Agency

§ 97.611

(11) The SO₂ variability limit for Ohio is 24,674 tons.

(12) The SO₂ variability limit for Pennsylvania is 20,164 tons.

(13) The SO₂ variability limit for Tennessee is 10,590 tons.

(14) The SO₂ variability limit for Virginia is 6,310 tons.

(15) The SO₂ variability limit for West Virginia is 13,620 tons.

(16) The SO₂ variability limit for Wisconsin is 8,619 tons.

(c) Each SO₂ trading budget in this section includes any tons in a new unit set aside or Indian country new unit set aside, but does not include any tons in a variability limit.

[77 FR 10339, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 34846, June 12, 2012, § 97.610 was amended by revising paragraph (a)(2); paragraphs (a)(7)(ii) and (a)(7)(v); paragraphs (a)(9) and (a)(11); and paragraphs (b)(2), (b)(9), and (b)(11), effective Aug. 13, 2012. For the convenience of the user, the revised text is set forth 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.

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(7) * * *

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

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

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(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.

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(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.

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(b) * * *

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

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

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

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§ 97.611 Timing requirements for TR SO₂ Group 1 allowance allocations.

(a) *Existing units.* (1) TR SO₂ Group 1 allowances are allocated, for the control periods in 2012 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a TR SO₂ Group 1 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a TR SO₂ Group 1 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2011, during the control period in two consecutive years, such unit will not be allocated the TR SO₂ Group 1 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All TR SO₂ Group 1 allowances that would otherwise have been allocated to such unit will be allocated to the new unit

set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate TR SO₂ Group 1 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units.* (1) New unit set-asides. (i) By June 1, 2012 and June 1 of each year thereafter, the Administrator will calculate the TR SO₂ Group 1 allowance allocation to each TR SO₂ Group 1 unit in a State, in accordance with §97.612(a)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the TR SO₂ Group 1 units) are in accordance with §97.612(a)(2) through (7) and (12) and §§97.606(b)(2) and 97.630 through 97.635.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will promulgate a notice of data availability of any adjustments that the Administrator determines to be necessary with regard to allocations under §97.612(a)(2) through (7) and (12) and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for such control period contains any TR SO₂ Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Adminis-

trator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any TR SO₂ Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of TR SO₂ annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of TR SO₂ annual units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of TR SO₂ Group 1 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the TR SO₂ Group 1 allowance allocation to each TR SO₂ Group 1 unit in accordance with §97.612(a)(9), (10), and (12) and §§97.606(b)(2) and 97.630 through 97.635. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of TR SO₂ Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any TR SO₂ Group 1 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such TR SO₂ Group 1 allowances in accordance with §97.612(a)(10).

(2) Indian country new unit set-asides. (i) By June 1, 2012 and June 1 of

each year thereafter, the Administrator will calculate the TR SO₂ Group 1 allowance allocation to each TR SO₂ Group 1 unit in Indian country within the borders of a State, in accordance with § 97.612(b)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the TR SO₂ Group 1 units) are in accordance with § 97.612(b)(2) through (7) and (12) and §§ 97.606(b)(2) and 97.630 through 97.635.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will promulgate a notice of data availability of any adjustments that the Administrator determines to be necessary with regard to allocations under § 97.612(b)(2) through (7) and (12) and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for such control period contains any TR SO₂ Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any TR SO₂ Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and

ending November 30 of year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of TR SO₂ annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of TR SO₂ annual units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of TR SO₂ Group 1 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the TR SO₂ Group 1 allowance allocation to each TR SO₂ Group 1 unit in accordance with § 97.612(b)(9), (10), and (12) and §§ 97.606(b)(2) and 97.630 through 97.635. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of TR SO₂ Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any TR SO₂ Group 1 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such TR NO_x Annual allowances in accordance with § 97.612(b)(10).

(c) *Units incorrectly allocated TR SO₂ Group 1 allowances.* (1) For each control period in 2012 and thereafter, if the Administrator determines that TR SO₂ Group 1 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.39(d), (e), or (f) of this

chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under §97.612(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under §52.39(e) or (f) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a TR SO₂ Group 1 unit under §97.604 as of January 1, 2012 and is allocated TR SO₂ Group 1 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under §52.39(d), (e), or (f) of this chapter, the recipient is not actually a TR SO₂ Group 1 unit as of January 1, 2012 and is allocated TR SO₂ Group 1 allowances for such control period that the SIP revision provides should be allocated only to recipients that are TR SO₂ Group 1 units as of January 1, 2012; or

(B) The recipient is not located as of January 1 of the control period in the State from whose SO₂ Group 1 trading budget the TR SO₂ Group 1 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under §52.39(d), (e), or (f) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a TR SO₂ Group 1 unit under §97.604 as of January 1 of such control period and is allocated TR SO₂ Group 1 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under §52.39(d), (e), or (f) of this chapter, the recipient is not actually a TR SO₂ Group 1 unit as of January 1 of such control period and is allocated TR SO₂ Group 1 allowances for such control period that the SIP revision provides should be allocated only to recipients that are TR SO₂ Group 1 units as of January 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Admin-

istrator will not record such TR SO₂ Group 1 allowances under §97.621.

(3) If the Administrator already recorded such TR SO₂ Group 1 allowances under §97.621 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under §97.624(b) for such control period, then the Administrator will deduct from the account in which such TR SO₂ Group 1 allowances were recorded an amount of TR SO₂ Group 1 allowances allocated for the same or a prior control period equal to the amount of such already recorded TR SO₂ Group 1 allowances. The authorized account representative shall ensure that there are sufficient TR SO₂ Group 1 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such TR SO₂ Group 1 allowances under §97.621 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under §97.624(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded TR SO₂ Group 1 allowances.

(5)(i) With regard to the TR SO₂ Group 1 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such TR SO₂ Group 1 allowances to the new unit set-aside for such control period for the State from whose SO₂ Group 1 trading budget the TR SO₂ Group 1 allowances were allocated; or

(B) If the State has a SIP revision approved under §52.39(e) or (f) covering such control period, include such TR SO₂ Group 1 allowances in the portion of the State SO₂ Group 1 trading budget that may be allocated for such control period in accordance with such SIP revision.

(ii) With regard to the TR SO₂ Group 1 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted

as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this paragraph, the Administrator will:

(A) Transfer such TR SO₂ Group 1 allowances to the new unit set-aside for such control period; or

(B) If the State has a SIP revision approved under § 52.39(e) or (f) covering such control period, include such TR SO₂ Group 1 allowances in the portion of the State SO₂ Group 1 trading budget that may be allocated for such control period in accordance with such SIP revision.

(iii) With regard to the TR SO₂ Group 1 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this paragraph, the Administrator will transfer such TR SO₂ Group 1 allowances to the Indian country new unit set-aside for such control period.

§ 97.612 TR SO₂ Group 1 allowance allocations to new units.

(a) For each control period in 2012 and thereafter and for the TR SO₂ Group 1 units in each State, the Administrator will allocate TR SO₂ Group 1 allowances to the TR SO₂ Group 1 units as follows:

(1) The TR SO₂ Group 1 allowances will be allocated to the following TR SO₂ Group 1 units, except as provided in paragraph (a)(10) of this section:

(i) TR SO₂ Group 1 units that are not allocated an amount of TR SO₂ Group 1 allowances in the notice of data availability issued under § 97.611(a)(1);

(ii) TR SO₂ Group 1 units whose allocation of an amount of TR SO₂ Group 1 allowances for such control period in the notice of data availability issued under § 97.611(a)(1) is covered by § 97.611(c)(2) or (3);

(iii) TR SO₂ Group 1 units that are allocated an amount of TR SO₂ Group 1 allowances for such control period in the notice of data availability issued under § 97.611(a)(1), which allocation is terminated for such control period pursuant to § 97.611(a)(2), and that operate

during the control period immediately preceding such control period; or

(iv) For purposes of paragraph (a)(9) of this section, TR SO₂ Group 1 units under § 97.611(c)(1)(ii) whose allocation of an amount of TR SO₂ Group 1 allowances for such control period in the notice of data availability issued under § 97.611(b)(1)(ii)(B) is covered by § 97.611(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated TR SO₂ Group 1 allowances in an amount equal to the applicable amount of tons of SO₂ emissions as set forth in § 97.610(a) and will be allocated additional TR SO₂ Group 1 allowances (if any) in accordance with §§ 97.611(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each TR SO₂ Group 1 unit described in paragraph (a)(1) of this section, an allocation of TR SO₂ Group 1 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2012;

(ii) The first control period after the control period in which the TR SO₂ Group 1 unit commences commercial operation;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the TR SO₂ Group 1 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more TR SO₂ Group 1 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation.

(4)(i) The allocation to each TR SO₂ annual unit described in paragraph (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of SO₂ emissions during the immediately preceding control period.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) in accordance with paragraphs (a)(5) through (7) and (12) of this section.