

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 51, 52, 72, 78, and 97**

[EPA-HQ-OAR-2009-0491; FRL-9249-6]

RIN 2060-AP50

**Notice of Data Availability for Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone: Request for Comment on Alternative Allocations, Calculation of Assurance Provision Allowance Surrender Requirements, New-Unit Allocations in Indian Country, and Allocations by States****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of data availability (NODA) for the proposed Transport Rule and request for comment.

**SUMMARY:** EPA has supplemented the Transport Rule docket with additional information relevant to the rulemaking, including unit-level SO<sub>2</sub> Group 1 and Group 2, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season allowances for existing units calculated using two alternative methodologies and data supporting those calculations. This NODA requests public comment on these two alternative allocation methodologies for existing units, on the unit-level allocations calculated using those alternative methodologies, on the data supporting the calculations, and on any resulting implications for the proposed assurance provisions. This NODA also requests comment on information about: An alternative approach to calculation of assurance provision allowance surrender requirements; allocations for new units locating in Indian country in the proposed Transport Rule region in the future; and provisions for states to submit State Implementation Plans providing for State allocation of allowances in the proposed Transport Rule trading programs.

**DATES:** Comments on this NODA must be received on or before February 7, 2011.

Please refer to **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

**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 online instructions for submitting comments. Attention Docket ID No. EPA-HQ-OAR-2009-0491.

- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2009-0491.

- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2009-0491, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include 2 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 Street, NW., Washington, DC 20503.

- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2009-0491. 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, avoid 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 and Information Center, EPA/DC, EPA East Building, 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 regarding this Notice of Data Availability and the additional allocations information placed in the docket contact Brian Fisher, Clean Air Markets Division, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mail Code: 6204J, Washington, DC 20460; telephone number: (202) 343-9633; fax number: (202) 343-2359; e-mail [fisher.brian@epa.gov](mailto:fisher.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:** Detailed background information describing the proposed rulemaking may be found in a previously published notice: Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (proposed Transport Rule); Proposed Rule, 75 FR 45210; August 2, 2010.

The information placed in the docket is also available for public review on the Web site for this rulemaking at <http://www.epa.gov/airtransport/>. If additional relevant supporting information becomes available in the future, EPA will place this information in the docket and make it available for public review on this Web site. This NODA does not extend the comment period for the proposed Transport Rule, which ended on October 1, 2010. This NODA also does not extend the comment period for the two NODAs supporting the proposed Transport Rule that were previously published in the **Federal Register**. The comment period for the NODA published September 1, 2010 closed on October 15, 2010. The comment period for the NODA published October 27, 2010 closed on November 26, 2010.

## I. Additional Information on Submitting Comments

### A. How can I help EPA ensure that my comments are reviewed quickly?

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Brian Fisher, Clean Air Markets Division, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mail Code: 6204J, Washington, DC 20460; telephone number: (202) 343-9633; fax number: (202) 343 2359; e-mail address [fisher.brian@epa.gov](mailto:fisher.brian@epa.gov).

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

1. **Submitting CBI.** Do not submit this information to EPA through EDOCKET, [regulations.gov](http://www.regulations.gov) or e-mail. 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: Gene Sun, Clean Air Markets Division, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mail Code: 6204J, Washington, DC 20460; telephone number: (202) 343-9119; fax number: (202) 343-2359.

2. **Tips for Preparing Your Comments.** When submitting comments, remember to: i. Identify the NODA by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

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

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

## II. Web Site for Rulemaking Information

The EPA has previously established a Web site for the proposed rulemaking at <http://www.epa.gov/airtransport>. The Web site includes the proposed rulemaking actions and other related information that the public may find useful in addition to a link to this NODA.

## III. What is this Notice of Data Availability?

In the Transport Rule Notice of Proposed Rulemaking (NPR), EPA proposed that, until states submit and the Administrator approves State Implementation Plans (SIPs), Transport Rule Federal Implementation Plans (FIPs) would provide backstops to prohibit emissions in upwind states that significantly contribute to nonattainment or interfere with maintenance of certain National Ambient Air Quality Standards (NAAQS) in downwind states in compliance with section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA). This Notice of Data Availability (NODA) provides an opportunity for public comment on five issues related to the proposed Transport Rule and on data relevant to those issues. The relevant data has been placed in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2009-0491) and on the Web at <http://www.epa.gov/airtransport>. Specifically, EPA is providing an opportunity for additional public comment on two methodologies for allocating allowances under the remedy proposed by EPA in the proposed Transport Rule and on supplemental data and information concerning the two allocation methodologies. EPA is also providing an opportunity for comment on: The implications of the alternative allocation methodologies for the proposed assurance provisions; an alternative approach to calculation of assurance provision allowance surrender requirements at the designated representative (DR) level; a methodology for allocating allowances to new units that choose to locate in Indian country in the Transport Rule region; and possible options for states

wishing to submit State Implementation Plans (SIPs) providing for State allocation of allowances in the proposed Transport Rule trading programs.

The first issue on which EPA is soliciting comment relates to allowance allocations under the proposed limited interstate trading remedy. In the Transport Rule NPR, EPA proposed FIPs with a limited interstate trading remedy and requested comment on alternative remedies including intrastate trading and direct control. To implement the proposed limited interstate trading remedy, EPA would, among other things, require sources to hold emissions allowances equal to their emissions of certain air pollutants during each compliance period. Because EPA proposed FIPs in the Transport Rule, EPA also proposed a methodology for distributing (allocating) the allowances to individual existing units based on a combination of adjusted historic and projected emissions data and requested comment on possible alternative allocation methodologies.

This NODA describes two specific alternative allocation methodologies that would potentially be used to allocate allowances under FIPs in the final Transport Rule. These alternatives rely largely on historic heat input data to determine unit-level allocations. The NODA provides the underlying data, calculations, and resulting unit-level allocations obtained when each alternative is applied to the State budgets in the proposed Transport Rule. These alternative allocation methodologies could be used to implement the proposed interstate trading remedy or the intrastate trading remedy set forth in the proposed Transport Rule. In developing the final Transport Rule, EPA will consider these alternative allocation methodologies, as well as the allocation methodologies presented in the proposed Transport Rule. Further, issuance of this NODA does not preclude EPA from finalizing any of the remedies in the Transport Rule proposal, including limited interstate trading, intrastate trading, or direct control.

EPA received numerous public comments on the methodology in the proposed Transport Rule for allocating SO<sub>2</sub> Group 1, SO<sub>2</sub> Group 2, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season allowances to existing units. Many commenters suggested alternative allocation approaches. A number of commenters requested that EPA publish allocations and underlying data for any potential alternative allocation methodologies before issuing a final Transport Rule. The public comments received are available in the docket for the Transport

Rule (Docket ID No. EPA-HQ-OAR-2009-0491).

This NODA describes the two alternative allocation methodologies for existing units. Classification of units as existing units is discussed in section IV in this NODA. Units that are not classified as existing units would receive allocations of allowances based on the provisions for new unit allocations in the proposed Transport Rule. Note that the proposed Transport Rule does not discuss allocations to new units in Indian country; see section VII in this NODA for information on a potential allocation methodology for such units.

The alternative methodologies for existing unit allocations described in this NODA emerge from comments that EPA received during the comment period on the proposed Transport Rule. This NODA explains the two alternative allocation methodologies and identifies the unit-level data that serve as inputs for these alternative methodologies and the resulting existing-unit-level allocations obtained when the methodologies are applied to the State budgets provided in the proposal. Section V in this NODA lays out key issues that EPA encourages commenters to consider when submitting comments on the alternative allocation methodologies.

The unit-level allocations in this NODA are based on State emissions budgets in the proposed Transport Rule. It is important to note that final State budgets may differ from the proposed budgets because EPA is still in the process of updating its emissions inventories and modeling in response to public comments, including comments on the Integrated Planning Model (IPM). The final budgets will be based on the updated inventories and modeling. Thus, unit-level allocations in this NODA provide an indication of the proportional share of a State's budget that would be allocated to individual existing units if the alternative methodologies would be used. Any final allocations in the final Transport Rule would be based on the final State budgets and allocation methodology employed in the final rule. Because the unit-level allocations in the proposed Transport Rule and the unit-level allocations in this NODA are based on the same State budgets (*i.e.*, the budgets in the proposed Transport Rule), this approach allows commenters to compare how the allocation methodologies impact the distribution of allowances within a state.

This NODA only provides illustrative allocations to potential existing Transport Rule units. For purposes of

this NODA, potential existing Transport Rule units are units that potentially meet the applicability criteria in the Transport Rule NPR (proposed §§ 97.404, 97.504, 97.604, and 97.704) and began commercial operation prior to January 1, 2009. Any unit that meets the proposed applicability criteria and began commercial operation on or after January 1, 2009 would be considered a new unit and receive allocations through the new unit set-aside described in the Transport Rule NPR because the unit would not have a full year of baseline data available at the time the Agency anticipates determining allocations to existing units. Such a new unit would not be reflected in the list of potential existing units for which illustrative allocations are presented in this NODA.

This NODA presents allocations based on the existing-unit portions of the state budgets under the proposed Transport Rule. In the proposal, the existing-unit portion of a state budget would be calculated as 97% of the total state budget in order to allot 3% to the new unit set-aside. EPA recognizes that the revised classification of units as existing units presented with these alternative allocation methodologies might affect the methodology used in the proposal that would establish the size of the new unit set-aside. EPA will consider comments submitted during this NODA's comment period when finalizing FIP allocations in the final Transport Rule and will address the issue of any effect of the finalized allocation methodology on the size of the new unit set-aside.

This NODA also requests public comment on four other issues. Specifically, the NODA requests comment on: an alternative approach to the calculation of assurance provision allowance surrender requirements (calculation at the DR level); the implications that the alternative allocation methods might have for the proposed assurance provisions; allocations to any new units that choose to locate in Indian country in a proposed Transport Rule state; and provisions for a state to participate in the Transport Rule trading programs through submission of a SIP (referred to as a full SIP) or to determine unit-level allocations under a FIP through submission of a SIP revision addressing only allocations (referred to as an abbreviated SIP).

EPA has placed in the docket for the proposed Transport Rule (Docket ID No. EPA-HQ-OAR-2009-0491) additional information relevant to the rulemaking, including illustrative unit-level allocations based on the state budgets

provided in the Transport Rule proposal and supporting data discussed in this NODA. The information placed in the docket is also available for public review on the Web site for this rulemaking at <http://www.epa.gov/airtransport>.

It is also important to note that EPA is neither proposing any changes to nor accepting comment on the approach that will be used to identify each state's significant contribution and interference with maintenance and each state's emissions budget. EPA took comment on this approach and the resulting state budgets in the proposed Transport Rule. EPA also took comment on related modeling and emissions inventories in two subsequent NODAs (75 FR 53613; September 1, 2010, and 75 FR 66055; October 27, 2010).

For example, EPA is accepting comment on the alternative allowance allocation methodologies presented in this NODA, but not on whether EPA should use a remedy that requires the allocation of allowances. The allowances that are allocated to individual units are a tool that would be used to implement two of the remedies discussed in the proposed Transport Rule—the proposed limited interstate trading remedy and the alternative intrastate trading remedy; the allocation methodologies detailed in this NODA are simply variations on approaches for distributing those allowances to individual units.

Similarly, while EPA is accepting comment on discrete issues relating to implementation of the assurance provisions, EPA is not accepting comments on the need to have assurance provisions. The EPA took comment on this in the proposed Transport Rule and is now only requesting comment on discrete implementation issues concerning the assurance provisions. In particular, EPA is requesting comment on the implications that the alternative allocations methods might have for the assurance provisions and on the alternative of calculating assurance provision surrender on a DR-by-DR, rather than an owner-by-owner basis. This latter alternative of implementing the assurance provisions on a DR-by-DR basis is simply a variation in implementation of the proposed assurance provisions.

In summary, this NODA provides the public with the opportunity to comment on:

a. The two alternative allocation methodologies (described in section V in this NODA), including the major components of each alternative (*e.g.*, the

baseline period and formulas to be used in calculating allocations);

b. The underlying unit-level data and resulting allowance allocations for the alternative allocation methodologies based on the proposal's state budgets; and

c. The list of units used in applying the alternative allocation methodologies, including the classification of "existing" units.

This NODA also provides the public with the opportunity to comment on:

- The alternative of implementing the proposed assurance provisions on a DR-by-DR, rather than owner-by-owner basis (section VI in this NODA);

- The implications that the alternative allocation methodologies might have concerning the proposed assurance provisions of the Transport Rule and the reasonableness of using the proposed assurance provisions with these alternative allocation methodologies;

- Information regarding unit-level allowance allocations for any new units that choose to locate in Indian country in the proposed Transport Rule region in the future (section VII in this NODA); and

- Information regarding provisions for a state in the proposed Transport Rule region to participate in the Transport Rule trading programs through submission of a full SIP or to determine the unit-level allocations under a FIP through submission of an abbreviated SIP addressing only allocations (section VIII in this NODA).

During the comment period for this NODA, EPA will accept comments only on the issues explicitly addressed in this NODA. EPA is not requesting, and will not consider, comments on other aspects of the proposed Transport Rule (such as determinations concerning states' significant contribution and interference with maintenance and state budgets). EPA is not extending the comment period of the proposed Transport Rule, which closed on October 1, 2010. EPA also is not extending the comment period of the NODA published September 1, 2010, which closed on October 15, 2010, or the comment period of the NODA published on October 27, 2010, which closed on November 26, 2010.

#### IV. What are the sources of data in this NODA?

##### A. List of Potential Existing Transport Rule Units

Under the proposed Transport Rule, a covered Transport Rule unit is generally any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion

turbine located in a proposed Transport Rule state and serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion device, a generator with a nameplate capacity greater than 25 MWe producing electricity for sale. The proposed Transport Rule would exclude certain cogeneration units and solid waste incineration units from being covered Transport Rule units.

This NODA provides for comment on unit-level allocations (based on the budgets in the proposed Transport Rule) to potential existing covered units. For purposes of this NODA, a potential existing unit is assumed to be a unit that would potentially meet the proposed applicability criteria (i.e., the criteria in proposed §§ 97.404, 97.504, 97.604, and 97.704 in the proposed Transport Rule) for covered units and that commenced commercial operation prior to January 1, 2009. This cutoff date was chosen for existing units because it assured that at least 1 full year of historic data would be available to determine each existing unit's allocation. This NODA contains a list of, and sets forth allocations under the two alternative methodologies to, units that potentially meet the covered and existing unit criteria discussed above based on EPA's best available data.

To identify the potential existing Transport Rule units, EPA relied largely on data reported to EPA. To develop the list of potential existing Transport Rule units, EPA first included any fossil-fuel-fired unit serving a generator greater than 25 MWe producing electricity for sale that is in a proposed Transport Rule state and on line prior to January 1, 2009 and that reported emissions data in 2010 under at least one of the following ongoing EPA trading programs: Clean Air Interstate Rule (CAIR) NO<sub>x</sub> or CAIR SO<sub>2</sub> annual trading program, Acid Rain Program (ARP), and CAIR NO<sub>x</sub> ozone Season in Massachusetts, Connecticut, or Arkansas. Data reported to EPA under the CAIR and ARP programs meets the requirements of part 75 and has been certified as to its accuracy and completeness by the source's designated representative.

Next, EPA supplemented the list of units by using data from the Integrated Planning Model (IPM) v.4.10 to identify potential existing Transport Rule units that were not included in emissions data reported to EPA. Specifically, IPM's National Electric Energy Data System (NEEDS) was used to identify and obtain data for a subset of fossil-fuel-fired units serving generators greater than 25 MWe producing electricity for sale that are in a proposed

Transport Rule state and were not reporting under one of the aforementioned ongoing EPA trading programs. NEEDS is a representation of all units capable of supplying electricity to the U.S. electric grid. This subset of units identified through NEEDS was then screened to remove units that were not potential existing Transport Rule units and thus not eligible to obtain allocations under one of the two alternative allocation methodologies discussed in this NODA.

In particular, if the unit was retired or in cold storage in 2010 or is a steam turbine at a combined cycle (CC) plant, then it was not included as a unit in the list of potential existing Transport Rule units.<sup>1</sup> The remaining units in this subset of units were added to the list. For instance, there were units in Nebraska, Kansas, and Oklahoma that were identified through NEEDS as being potential existing Transport Rule units that were not currently reporting under one or more of the aforementioned ongoing EPA trading programs because the units were not ARP units and were not in a CAIR state. Finally, a small number of units were added to or removed from the list based on comment and supporting data previously submitted to the EPA during the comment period on the proposed Transport Rule by the unit owner or operator.

As described above, the list of potential existing Transport Rule units is based on EPA and NEEDS data. Units identified using the EPA and NEEDS databases were included in the list of potential existing Transport Rule units if they were in one of the following states covered by the proposed Transport Rule: Arkansas, Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

EPA notes that inclusion of a unit in, or exclusion of a unit from, the list of potential existing Transport Rule units presented in this NODA reflects only a preliminary assessment of the applicability of the proposed Transport Rule and in no way suggests that EPA has made a determination about the

<sup>1</sup> In NEEDS, the combustion turbine and steam turbine associated with a single CC plant are generally represented as two separate generating units. The steam turbine at a CC does not combust fuel, though, and should not be included in the list of potential existing Transport Rule units.

applicability of the proposed Transport Rule to any unit. As discussed above, the list of units developed for this NODA enables EPA to calculate illustrative allowance allocations for potential existing units based on the alternative methodologies presented. Moreover, this list may be used by EPA to calculate unit-level allocations in the final Transport Rule. While allocations calculated for the final Transport Rule would be based on the best available data provided to EPA by the time of the calculation, the applicability of the final Transport Rule to an individual unit would be determined based on all relevant data, whether or not EPA would have such data at the time that allocations would be calculated. In fact, because any list of units developed for purposes of allowance allocation may not be entirely consistent with applicability determinations made in the future, the proposed Transport Rule (proposed §§ 97.411(c), 97.511(c), 97.611(c), and 97.711(c)) would establish procedures to be applied when the Administrator would determine that a unit allocated allowances would turn out not to actually be a proposed Transport Rule unit. For example, under these proposed procedures, if such a determination would be made after EPA's recordation of the allowance allocation but before EPA's deduction of allowances for compliance with the requirement to hold allowances covering emissions, the Administrator would deduct the recorded allowances and transfer them to a new unit set-aside for the appropriate state.

If owners and operators believe that their units that are included in the list of potential existing units should not be included, these owners and operators should submit comments on this NODA informing EPA why the units should not be in the list. If owners and operators believe that their units should be, but are not, treated as potential existing Transport Rule units and included in the list of such units provided by this NODA, these owners and operators should submit comments on this NODA, informing EPA that the units should be added to the list and allocated allowances and providing support for this addition to the list. The data necessary for calculating allowance allocations under the two alternative allocation methodologies should also be provided. A unit that would not be allocated allowances as an existing unit because of the unit's exclusion from the list of potential existing Transport Rule units could ultimately be determined to be a Transport Rule unit. Under the proposed Transport rule, each Transport

Rule unit would be subject to the allowance-holding requirements of the Transport Rule regardless of whether the unit would be allocated any allowances as an existing unit.

#### *B. Historic Heat Input and Emissions Data Used in the Allowance Allocation*

The alternative allocation methodologies presented in this NODA draw on historic heat input and historic emissions for potential existing Transport Rule units. For units subject to one of the aforementioned ongoing EPA trading programs and included in the list of potential existing Transport Rule units, EPA used reported heat-input data from the EPA database for the years 2005 through 2009. For these same units, EPA used reported emissions from the EPA database for the years 2003 to 2009. These data are publicly available through EPA's data and maps at <http://camddataandmaps.epa.gov/gdm/>.

For units included in the list of potential existing Transport Rule units that were not reporting under one of the aforementioned ongoing EPA trading programs, EPA used historic heat input and emissions data from Energy Information Administration (EIA) forms 767, 860, 906, 920, and 923. These data are publicly available at <http://www.eia.doe.gov/cneaf/electricity/page/data.html>.

#### **V. What are the alternative allocation methodologies and on what is EPA requesting comment?**

##### *(a) Why is EPA considering heat input-based allocation methodologies?*

In the proposed Transport Rule, EPA proposed a methodology for allocating allowances to potential existing Transport Rule units. That methodology is based on a combination of adjusted historic and adjusted projected emissions data. EPA received a large number of public comments from a variety of commenters suggesting alternative allocation methodologies. One of the most frequently suggested metrics for allocation was historic heat input. Commenters stated that using historic heat input as the basis for allocations has the following advantages:

- (i) Historic heat input data are more likely to be accurate at a unit level than projected unit-level emissions and are generally based on quality-assured data reported by sources from continuous monitoring systems.
- (ii) Historic heat input data are fuel-neutral.
- (iii) Historic heat input data are emissions-control-neutral and thus do

not yield reduced allocations for units that installed or are projected to install pollution control technology.

EPA is considering the above-listed points made by commenters regarding heat-input based allocations.

Numerous commenters also noted that EPA has broad authority to implement alternative allocation methodologies under sections 110(a)(2)(D)(i)(I) and 302(y) of the Clean Air Act (CAA).<sup>2</sup> EPA agrees with commenters that the Agency has significant discretion in this area. Neither the CAA nor the D.C. Circuit Court's opinion in *North Carolina v. EPA* (531 F.3d 896 (D.C. Cir. 2008)), specifies a particular methodology that EPA must use to allocate allowances to individual units. The statute focuses on prohibiting emissions within the state that significantly contribute to or interfere with maintenance. Under CAA section 110(a)(2)(D)(i)(I), states have significant discretion to develop a control program in a SIP that achieves this objective and EPA has similarly wide latitude when issuing a FIP. Moreover, the definition of FIP in section 302(y) of the Act clarifies that a FIP may include "enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances)" but does not require EPA to use any particular methodology to allocate allowances under a FIP trading program. In light of this lack of direction concerning allowance allocation, EPA has significant discretion to select an allocation methodology that is reasonable and consistent with the goals of CAA section 110(a)(2)(D)(i)(I) of the Act, including improving long-term air quality and encouraging cost-effective emissions reductions.

EPA believes the allocation methodologies presented in the proposed Transport Rule as well as those presented in this NODA all meet that test. Section 110(a)(2)(D)(i)(I) of the CAA requires that emissions "within a state" that significantly contribute to nonattainment or interfere with maintenance in another state be

<sup>2</sup> CAA section 302(y) defines the term "Federal implementation plan" as follows:

Federal implementation plan.—The term "Federal implementation plan" means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

prohibited. In the proposed Transport Rule, EPA analyzed each individual state's significant contribution and interference with maintenance and calculated budgets that represent each state's emissions after the elimination of those prohibited emissions. The methodology used to allocate allowances to individual units in a particular state has no impact on that state's budget or on the requirement that the state's emissions not exceed that budget plus variability. Regardless of the allocation methodology used, all emissions in each covered state that significantly contribute to nonattainment or interfere with maintenance in another state will be prohibited. In sum, the allocation methodology has no impact on the rule's ability to satisfy the statutory mandate of CAA section 110(a)(2)(D)(i)(I) to eliminate significant contribution and interference with maintenance in downwind states.

EPA believes that a historic-heat-input-based allocation methodology is consistent with the goals of CAA section 110(a)(2)(D)(i)(I). The proposed Transport Rule would set state budgets reflecting the overall emission reductions necessary for each respective state to eliminate significant contribution and interference with maintenance in downwind states. The initial allocation of allowances under each state budget to existing units on the basis of the units' historic heat input would yield a distribution of allowances putting relatively greater burden on the higher-emission-rate units to reduce emissions or purchase additional allowances in order for the units to be in compliance with the proposed Transport Rule trading programs. This pattern would result because heat-input-based allocations would provide the same share of allowances to units with the same heat input even though the higher-emission-rate units would require more allowances in order to cover their emissions than would lower-emission-rate units. EPA believes that, because higher-emission-rate units generally are responsible for a greater share of a state's total emissions and thus bear greater responsibility for a state's significant contribution and interference with maintenance, this distribution of burden is consistent with the goals of CAA section 110(a)(2)(D)(i)(I).

The proposed Transport Rule includes four trading programs (SO<sub>2</sub> Group 1, SO<sub>2</sub> Group 2, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season). EPA requests comment on whether the allocation methodology chosen for each of the four trading programs must be the same or

whether it would be reasonable to allocate using different methodologies for the different programs. EPA also requests comment on rationales for using different methodologies for the different trading programs.

*(b) What are the alternative heat input allocation methodologies and how would they be applied?*

This NODA provides an opportunity for public comment on the two alternative allocation methodologies described below. To make it easier for commenters to compare the methodologies presented in this NODA with the methodology proposed in the proposed Transport Rule, EPA is providing in the rulemaking docket for the Transport Rule (and on the EPA *Web site*) data showing the unit-level allocations that would result if the methodologies were applied to allocate allowances from the state budgets in the proposed Transport Rule. As noted above, these budgets may be revised in the final Transport Rule and thus the unit-level allocations (based on 97% of the respective state budgets) in this NODA would not necessarily be the unit-level allocations in the final rule.

The alternative allocation methodologies described in this NODA represent two variations of historic-heat-input-based allocations. For each alternative allocation methodology, the underlying data and resulting allocations are set forth in allocation tables located at <http://www.epa.gov/airquality/transport/actions.html> and in the public docket for the Transport Rule. The calculations used to derive the unit-by-unit allocations for each alternative option are described below.

Option 1 described below would allocate a state's existing unit budget (*i.e.*, 97% of its budget) based on each unit's proportionate share of the state's total historic heat input.

Option 2 would yield the same initial allocation pattern as Option 1 (based on historic heat input) but would then add a constraint (*i.e.*, a limit on allocations) premised on a unit's reasonably foreseeable maximum emissions under the proposed Transport Rule trading programs.

#### Option 1—Historic Heat Input Approach

This option would establish a baseline historic heat input value for each potential existing Transport Rule unit and allocate to that unit a share of available allowances under each proposed Transport Rule program equal to the unit's percentage share of the total baseline historic heat input for all potential existing Transport Rule units

in the state. As with all allocation approaches under consideration by EPA, this option would be applied to each state separately using the portion of that state's budget available for potential existing Transport Rule units in that state. Allocations under this approach for each existing unit would be determined by applying the following steps.

1. For each unit in the list of potential existing Transport Rule units, annual heat input values for the baseline period of 2005 through 2009 would be identified using data reported to EPA or, where EPA data is unavailable, EIA. As discussed above, for purposes of this NODA, potential existing Transport Rule units are units that potentially meet the applicability criteria in the proposed Transport Rule and began commercial operation prior to January 1, 2009. A number of units would not have non-zero data for one or more of the baseline years (*e.g.*, a unit that came on line after 2005 but before 2009) and would be assigned a zero value for each of those years in the baseline. (Step 2 explains how such zero values would be treated in the calculations.) This option would use a five-year baseline in order to improve representation of a unit's normal operating conditions over time. EPA requests comment on the existing-unit cut-off date of January 1, 2009 for purposes of this NODA.

2. For each unit, the three highest, non-zero annual heat input values within the 5 year baseline would be selected and averaged. Selecting the three highest, non-zero annual heat input values within the five-year baseline would reduce the likelihood that any particular single year's operations (which might be negatively affected by outages or other unusual events) would determine a unit's allocation. If a unit would not have three non-zero heat input values during the 5 year baseline period, EPA would average only those years for which a unit does have non-zero heat input values. For example, if a unit has only reported data for 2008 and 2009 among the baseline years and the reported heat input values are 2 and 4 mmbtus respectively, then the unit's average heat input used to determine its pro-rata share of the state budget would be  $(2+4)/2 = 3$ .

3. Each unit would be assigned a baseline heat input value calculated as described in step 2 above. This baseline heat input value is referred to in the data tables in the rulemaking docket and on the *Web site* referenced previously, and in the remainder of this NODA, as the "three-year average heat input".

4. The three-year average heat inputs of all potential existing Transport Rule units in a state would be summed to obtain that state's total "three-year average heat input".

5. Each unit's three-year average heat input would be divided by the state's total three-year average heat input to determine that unit's share of the state's total three-year average heat input.

6. Each unit's share of the state's total three-year average heat input would be multiplied by the state's existing-unit portion of the state budget (i.e., 97% of the state budget) to determine that unit's allocation.

#### Option 2—Emissions-Rate-Informed Historic Heat Input Approach

This option retains the historic-heat-input-based approach but adds a constraint premised on a unit's reasonably foreseeable maximum emissions under the proposed Transport Rule trading programs. For the majority of units, the historic heat input-based allocation will not be sufficient to cover historic emission levels; this reflects the shared burden on units to reduce emissions in order to eliminate the state's significant contribution and interference with maintenance. Heat input-based allocations only exceed historic emissions for units at the lower end of the range of historic emission rates for the pollutant involved. For these lower-emission rate units, this option would establish, based on historic data, a reasonably foreseeable maximum emissions level reflecting a reasonable upper-bound capacity utilization factor and a well-controlled emission rate that all units (regardless of the type of fuel they combust) can meet for the pollutant. For those units whose heat-input-based allocations would exceed historic emissions, this option would limit the historic-heat-input-based allocations to this maximum emissions level so that the units would not be allocated allowances in excess of their reasonably foreseeable maximum emissions. EPA believes that this approach would result in a reasonable initial distribution of allowances that is consistent with the goals of CAA section 110(a)(2)(D)(i)(I).

1. The same 6 steps outlined above in Option 1 would be applied to each unit.

2. A seven-year (2003 through 2009) historic emissions baseline would be established for SO<sub>2</sub>, NO<sub>x</sub>, and ozone season NO<sub>x</sub> based on data reported to EPA or, where EPA data is unavailable,

EIA data. This approach would use this seven-year historic emissions baseline in order to reflect unit-level emissions before and after the promulgation of the CAIR.

3. For each unit, the maximum annual historic SO<sub>2</sub> and NO<sub>x</sub> emissions would be identified within the seven-year baseline. Similarly, the maximum ozone season NO<sub>x</sub> emissions from the seven-year baseline for each unit would be identified. These values are referred to as the "maximum historic baseline emissions" for each unit.

4. For each unit whose historic-heat-input-based allocation exceeds its maximum historic baseline emissions, EPA would determine an emission level (referred to as the "well-controlled-rate maximum" for each unit) calculated as:

a. For a unit reporting maximum hourly heat input to EPA, the reported figure multiplied by a well-controlled emission rate of 0.06 lbs/mmBtu for SO<sub>2</sub> and 0.06 lbs/mmBtu for NO<sub>x</sub>. For a unit that does not report maximum hourly heat input to EPA, EPA would estimate the unit's maximum hourly heat input by multiplying the unit's heat rate and capacity values (from NEEDS in IPM version 4.10). These well-controlled emission rates of 0.06 lbs/mmBtu for SO<sub>2</sub> and NO<sub>x</sub> represent the lowest annual emission rates assumed achievable when state-of-the-art pollution control technologies are installed at coal units in the IPM modeling.<sup>3</sup>

b. The unit's maximum hourly heat input determined in step 4.a above would be multiplied by 8,760 hours (annual) or 3,672 hours (ozone season) to get an annual or ozone season emissions level at 100% utilization.

c. The unit's emissions level at 100% utilization determined in step 4.b above would be multiplied by the reasonable upper-bound capacity factor for each technology type. These upper-bounds would be calculated as the utilization values at the 95th percentile in each technology class.<sup>4</sup> These 95th percentile values are set forth in the table below.

<sup>3</sup> As identified in EPA's documentation of EPA Base Case v. 4.10 model available at <http://www.epa.gov/airmarkets/progsregs/epa-ipm/docs/v410/Chapter5.pdf>. These emission rates are based on the floor rates used in IPM modeling and are intended to reflect the lower bound of emission rates that suppliers are willing to guarantee when installing state-of-the-art pollution control equipment (selective catalytic reduction (SCR) and flue-gas desulfurization (FGD)).

<sup>4</sup> Capacity factors were determined as follows. (1) Using data reported to EPA by source owners

TABLE I—SUMMARY OF CAPACITY FACTORS AT 95TH PERCENTILE  
["Reasonable Upper-Bound Capacity Factor"]

Technology class	Annual	Ozone season
Coal-fired boiler .....	0.87	0.89
Combined cycle .....	0.70	0.73
Combustion turbine .....	0.14	0.22
Oil or gas fired boiler .....	0.46	0.55
Other .....	0.71	0.75

5. If a unit identified in step 4 has an historic-heat-input-based allocation greater than both its maximum historic baseline emissions (as determined in step 3) and its well-controlled-rate maximum (as determined in step 4), then its allocation (referred to as the unit's "reasonable foreseeable maximum emissions level") would equal the higher of these two values.

6. The difference (if positive) under step 5 between a unit's historic-heat-input-based allocation and its "reasonable foreseeable maximum emissions level" would be reapportioned on the same basis as described in step 1 to units whose historic-heat-input-based allocations are not revised under step 5. Steps 4, 5, and 6 would be repeated with each revised allocation distribution until the entire existing-unit portion of the state budget (i.e., 97% of the state budget) would be allocated.

The table below provides an example of application of the steps in Option 2.

and operators under the aforementioned ongoing EPA trading programs, EPA determined, for units reporting electrical output, the capacity factor for each unit for each year of operation during 2000–2009 by dividing gross electrical output by maximum hourly load times 8,760 hours/year and, for units reporting steam output (KLBsteam), dividing total mass of steam produced by the maximum rate times 8,760 hours; (2) EPA then identified each unit's plant type based on how the unit was listed in NEEDS in IPM version 4.10 (e.g., coal steam, combined cycle, combustion turbine, oil/gas steam, and "other"). "Other" comprised fossil waste, biomass, tires, and landfill gas. (3) Using the units' calculated annual capacity factors, EPA identified the 95th percentile value of capacity factor for each plant type. Resulting values are in Table 1 above. This analysis is based largely on the same data and methodology used in the Capacity Factor Analysis Technical Support Document located at [http://www.epa.gov/airquality/transport/pdfs/TSD\\_capacity\\_factors\\_analysis\\_for\\_new\\_units\\_7-6-10.pdf](http://www.epa.gov/airquality/transport/pdfs/TSD_capacity_factors_analysis_for_new_units_7-6-10.pdf). However, in this analysis EPA expanded the data set to include all units, whereas the previous analysis had examined solely CAIR units online after 1999 because its focus had been on new units.

TABLE II—DEMONSTRATION OF ALLOCATIONS USING OPTION 2 IN A TWO-UNIT STATE WITH A 30-TON STATE BUDGET

	Step 1	Step 2 & 3	Step 4	Step 5 (greater of step 3 result or step 4 result)	Step 6
	Heat-input-based allocation	Historic maximum baseline emissions	Well-controlled-rate maximum	Reasonable foreseeable maximum emissions level	Final allocation
Unit A .....	10	4	6	6	6
Unit B .....	20	40	N/A	N/A	24

*(c) What allocations-related data and information are the EPA making available for review and comment?*

EPA has used the best available data to develop a list of potential existing Transport Rule units and to calculate illustrative allowance allocations for each such unit under the two alternative allocation methodologies discussed in this NODA. However, through the NODA, EPA is giving unit owners and operators and the public in general the opportunity to offer comments on individual units' inclusion in or exclusion from such list and—for units that EPA included on the list or that commenters believe should be included on the list—on the data needed for allocation calculations (including any necessary data that EPA has not provided in this NODA) under the two alternative allocation methodologies and the allocations that result or should result from such calculations.

For units on the list of potential existing Transport Rule units, EPA is providing for the years 2003 through 2009 the relevant EPA-reported heat input and emissions data under the aforementioned ongoing EPA trading programs and, for those units not reporting under these programs, heat input and fuel data in EIA databases. EPA is also providing the Agency's calculations using these data in the two alternative allocation methodologies described in this NODA.

In addition to comments on the list of potential existing Transport Rule units, allocation-related data, and calculations of allocations, EPA requests comments on the appropriateness of the alternative allocation methodologies and their implications for rule implementation. In particular, EPA encourages commenters to address the following:

- Are the alternative allocation methodologies clear and easy to understand?
- Do these alternative methodologies raise any implementation concerns, such as concerns about feasibility of implementing the methodology?

• How are these methodologies consistent with the goals of CAA section 110(a)(2)(D)(i)(I)?

- Do these alternative methodologies yield a reasonable distribution of allowances?
- Should the same methodology be used for each of the proposed Transport Rule trading programs, or should a different methodology be used for one or more such trading programs?

*(d) Why is the EPA providing opportunity to comment on these allocation-related data and information?*

Through this NODA, EPA is providing owners and operators, states and the public in general the opportunity to comment on the allocations-related data and information described above in order to ensure that we use the best available data in the Transport Rule FIP allocation process. For example, the heat input and emissions data used to calculate allocations came from data reported to EPA and EIA, and a unit owner or operator (or other member of the public) should comment if he or she sees any discrepancy between the data reported for the unit and the heat input and emissions data used in calculating the allocations in this NODA. Such comment should include the data that the commenter believes EPA should use and the source of that data and where else the data may be reported to the Federal government. EPA is also providing an opportunity to comment on the calculations using the alternative allocation methodologies and the data in order to ensure the accuracy of the calculations.

The allocations presented in this NODA are also based on the list of potential existing Transport Rule units developed using data currently available to EPA. As discussed above, a unit's inclusion on or exclusion from this list does not constitute a determination of the applicability of the proposed Transport Rule to the unit, but rather reflects EPA's preliminary application

of the applicability provisions in the proposed Transport Rule. In order to ensure the accuracy of the allocation calculations, the EPA is providing this opportunity for source owners and operators, and the public in general, to (1) comment on units' inclusion in, or exclusion from, the allocation tables in the NODA and the data on which the inclusion or exclusion is or should be based, (2) comment on the heat input and other data used or that should be used to calculate the allocations and the resulting allocations, and (3) submit corrections of the data or supplementary data. While EPA requests that owners and operators, states, and other members of the public who believe that a unit has been incorrectly included in or excluded from the allocation tables submit a comment (including any supporting data). EPA is not requesting, and will not consider, any comments on the proposed applicability provisions themselves (proposed §§ 97.404, 97.504, 97.604, and 97.704).

The addition or removal of existing units to or from a state's list of potential existing Transport Rule units will not impact the size of the state budget. EPA's responses to comments on this NODA concerning the list of potential existing Transport Rule units and the data to be used to allocate to specific units and EPA's updated modeling and responses to comments on the proposed Transport Rule concerning the proposed state budgets may result in the individual units receiving different shares of the applicable state budget than reflected in the allocation tables.

*(e) What supporting documentation do I need to provide with my comments?*

While we will consider all comments on issues that are within the scope of this NODA, these comments should be supported with appropriate documentation. Supporting documentation can include, but is not limited to, spreadsheets, explanations of why you believe the data on such spreadsheets are accurate (e.g., the

quality assurance of the data), and information on the data source.

In general, we do not anticipate revisions to unit heat input and emissions data reported to EPA under the ARP and CAIR programs since, in submitting the data under these programs, a source's DR has already certified the accuracy and completeness of the data. However, we will consider any comments. For example, a source's DR may provide evidence that we improperly calculated heat input at the unit-level if the heat input was actually measured at another location (such as a common stack). As a further example, a source's DR may demonstrate that the data provided in this NODA are not consistent with the data reported to EPA for compliance with the ARP or CAIR programs. In that case, the commenter should explain why the data values in EPA's data files are incorrect and should document and explain the new data values.

Similarly, in general, we do not anticipate revisions to data reported to EIA since such data were submitted to meet regulatory reporting requirements. However, we will consider any comments on the data as reported, as well as on any calculation in which we used the data for purposes of this NODA.

#### **VI. On what aspects of the proposed assurance provisions is EPA requesting comment?**

##### *(a) Whether the Assurance Provision Allowance Surrender Requirement Should be Calculated on a Designated Representative Basis*

Under the proposed Transport Rule, the assurance provisions would be triggered for a state for a given year if total emissions for covered units in the state for the year exceed the state assurance level (*i.e.*, the state budget plus the state's variability limit). As proposed, if this level were exceeded, the assurance provision allowance surrender requirement would be imposed on certain owners of covered units in the state and calculated on an owner-by-owner basis. Specifically, each owner whose share of the state's total covered-unit emissions exceeded the owner's share of the state assurance level would have to surrender a proportionate share of the state's exceedance. In this NODA, EPA is requesting comment on whether the surrender requirement should be imposed on certain owners and operators of covered units in the state but calculated on a DR-by-DR basis, rather than on an owner-by-owner basis.

Under this alternative approach, the calculation of shares of covered-unit emissions and of the state budget plus variability would be performed for each group of covered units having a common DR. EPA would use the DR as of the allowance transfer deadline for a given control period (generally March 1 following the control period for the proposed Transport Rule NO<sub>x</sub> and SO<sub>2</sub> annual trading programs and December 1 following the control period for the proposed Transport Rule NO<sub>x</sub> ozone season trading program) for determining assurance provision surrender requirements. In order to be treated as a group of covered units for this purpose, the units would have to be located at sources in the state with the same individual as their DR (not alternate designated representative).<sup>5</sup>

For each such group of covered units in the state, the DR's share of the state's covered-unit emissions (*i.e.*, the total emissions of the covered units at the group of covered sources having that DR) for the year and the DR's share of the state assurance level (*i.e.*, the total allocations for the covered units at such sources plus the units' proportionate share of the state variability limit) would be calculated. The owners and operators represented by a common DR whose share of state covered-unit emissions exceeded his or her share of the state assurance level would all be subject to the DR's proportionate share of the proposed assurance provision allowance surrender requirement (*i.e.*, the requirement that one allowance be surrendered for each ton by which the state's total covered-unit emissions would exceed the state assurance level). The DR's share of the surrender requirement would equal the amount by which the DR's share of the state's total covered-unit emissions exceeded the DR's share of the state assurance level, divided by the sum of all such exceedances for all DRs for covered units in the state. The owners and operators would be collectively and individually liable for making this allowance surrender and would determine themselves how to divide up the actual surrender. This would be

<sup>5</sup> Under proposed §§ 97.413, 97.513, 97.613, and 97.713, the owners and operators of a source could designate one individual as the DR, who would represent and legally bind them in all matters concerning the proposed Transport Rule trading programs. Under these provisions, these owners and operators also could designate another individual as the alternate designated representative, who could act on behalf of the DR and would legally bind the DR and thus the owners and operators. EPA notes that the concept of requiring representation of source owners and operators by a DR has been used in prior EPA trading programs, including the ARP and CAIR trading programs.

similar to the way that all owners and operators of a covered source that fails to hold allowances covering the source's emissions are collectively and individually liable for an excess emissions penalty. The owners and operators subject to the allowance surrender requirement would be required to transfer the necessary amount of allowances by the specified deadline to an assurance account created by EPA for these owners and operators.

EPA believes that imposing the proposed assurance provision allowance surrender requirement at the DR level, rather than owner level, is more straightforward and consistent with information already provided to EPA and potentially provides owners and operators with more flexibility than under the approach in the proposed Transport Rule. Other requirements under the proposed Transport Rule trading programs (*e.g.*, the requirement to monitor and report emissions and to hold allowances covering emissions) would be imposed on a unit-by-unit or source-by-source basis. Consequently, EPA would not generally obtain detailed ownership information (such as percentage ownership in individual units) and would have to collect such information only in order to implement the owner-by-owner approach in the assurance provisions in the proposed Transport Rule. The DR approach for calculating the assurance provision surrender requirements would eliminate the need to collect detailed ownership information and would also avoid the complications arising from having to divide up units' emissions and allocations among partial owners of the units. In addition, the DR approach would apply to units with a common DR even in the case where the units involved did not have a common owner or operator. This would allow owners and operators to designate a common DR for all of the sources at which their units are located and thereby obtain the increased flexibility of having the assurance provisions apply to the entire group. Like the proposed approach of calculating the assurance provision surrender requirements on an owner-by-owner basis, the alternative approach of calculating such requirements on a DR-by-DR basis could be applied under any of the allocation methods under consideration. In developing the final Transport Rule, EPA will consider both approaches.

*(b) Whether the Overall Assurance Provision Approach Should Be Maintained if One of the Alternative Allocation Methodologies Is Used in the Final Transport Rule*

EPA received several comments on the proposed Transport Rule concerning whether the proposed assurance provisions should be changed if the proposed allocation methodology were changed. For the reason discussed below, EPA does not believe that a change in allocation methodology would necessitate any changes in the assurance provisions set forth in the proposed Transport Rule. In the unlikely event that a state exceeds its state assurance level, only the owners and operators whose shares (or the owners and operators whose common DR's share) of the state's emissions exceed the owners' and operators' (or the common DR's) share of the state assurance level would be subject to the allowance surrender requirement.

While EPA believes the likelihood of triggering assurance provisions would be low for the reasons provided in the proposed Transport Rule (75 FR 45314), the assurance provisions must have an enforcement mechanism to be effective. The assurance provision allowance surrender requirements exist to ensure that the state budgets plus variability limits (the state assurance levels) would not be exceeded in any state. These surrender requirements identify what penalties would apply if the assurance level were to be exceeded.

EPA believes that a change to the allocation methodology would not necessitate any changes to the assurance provisions in the proposed Transport Rule for the following reason. The proposed Transport Rule explained that, in the event that a state's total emissions would exceed the state budget plus variability, those groups of units (whether grouped by owner as in the proposal or by common DR as discussed in this NODA) with an analogous exceedance (*i.e.*, those groups of units with total emissions exceeding their total allowance allocations plus their shares of state variability) would reasonably be viewed as accounting for the state's exceedance and thus should be subject to proportionate shares of the allowance surrender penalty calculated as one allowance to be surrendered for each ton of the state's exceedance. Even under a different allowance allocation methodology than the allocation methodology proposed in the Transport Rule, it would continue to be the case that groups of units with greater emissions than their allocations plus share of state variability would

reasonably be held responsible for the state's excess of emissions over the state assurance level. EPA believes that any state that would exceed its state assurance level would likely do so because not all units would have made the reductions necessary to eliminate the state's contribution to nonattainment or interference with maintenance. Moreover, the groups of units with emissions exceeding their allocations plus share of variability would be the units that were most likely to have contributed to the state's exceedance of its state assurance level and thus to the state's triggering of the assurance provisions. Consequently, it would be reasonable to penalize those groups of units (whether grouped by owner or by common DR)—through application of the assurance provision allowance surrender requirement—for the state's exceedance.

EPA received comments that proposed assurance provision penalties should be delinked from allocations and that a different method of imposing such penalties should be applied. However, as discussed above, the Agency still believes that the proposed assurance provisions provide a reasonable way of identifying those sources within a state that most likely contributed to, and share responsibility for, any triggering of the assurance provisions. EPA also believes that the proposed assurance provisions, with calculation of the allowance surrender requirements made on an owner-by-owner basis (as proposed) or on a DR-by-DR basis (under the alternative discussed in this NODA) provide a reasonable way of distributing proportionate shares of the responsibility for eliminating a state's significant contribution and interference with maintenance. However, EPA is requesting comment in this NODA on the implications of retaining the proposed assurance provisions (with the surrender requirements calculated on an owner-by-owner or DR-by-DR basis) in conjunction with the alternative allocation methodologies presented. While EPA believes that the overall approach for the assurance provisions would still be appropriate with an alternative allocation methodology, the Agency may reevaluate some of the details of those provisions, for example, the proposed variability limits for each state, the treatment of new units that have not yet been allocated allowances, and the allowance surrender levels when it promulgates the final Transport Rule.

## VII. Allocations to New Covered Units in Indian Country in the Future

EPA received comments that it did not adequately consider opportunities for Indian tribes to enter into any of the trading programs in the Transport Rule proposal. This section explains and provides an opportunity to comment on some options for allocating allowances to covered units that might in the future be constructed in Indian country. In addition, EPA has initiated a process to consult with any interested tribes on issues related to the proposed Transport Rule and will conclude this consultation before making any final decisions on this issue. EPA will take into consideration additional input it receives as part of the tribal consultation process.

In the Tribal Authority Rule, EPA determined that it was appropriate to treat eligible Indian tribes in the same manner as states for purposes of the prohibitions and authority contained in CAA section 110(a)(2)(D). *See* 63 FR 7254, 7260; February 12, 1998. Tribes are not, however, required to submit implementation plans. As explained in EPA's regulations outlining Tribal Clean Air Act authority, EPA is authorized to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit and get EPA approval of an implementation plan. *See* 40 CFR 49.11(a). Presently, there are no covered sources located in Indian country in the region covered by the proposed Transport Rule. In the event of the planned construction of such a source in Indian country in the proposed Transport Rule region, EPA intends to work with the relevant Tribal government to ensure that Tribal concerns regarding allocations are addressed and, at the same time, that emissions from the source do not violate CAA section 110(a)(2)(D)(i)(I). In the case of a covered source locating in the future in Indian country in the proposed Transport Rule region, the EPA anticipates that the Transport Rule FIPs would require the covered source to meet the requirements of the proposed EPA administered Transport Rule trading programs if those programs are finalized.

EPA also anticipates that any covered units at a covered source locating in Indian country in the proposed Transport Rule region would be eligible to receive allowances from the EPA-administered new unit set-aside under the FIPs for the proposed Transport Rule state in which the area of Indian country is located. Identical to the approach proposed in the Transport Rule for other new covered units, the

owner or operator of units in Indian country in the proposed Transport Rule region could request allocations from the EPA-administered new unit set-aside by a specified deadline each year. The allocations distributed by EPA under the FIPs would equal that unit's emissions for the control period in the preceding year (75 FR 45322). EPA has not currently identified a basis for treating new units locating in Indian country without initial SO<sub>2</sub> or NO<sub>x</sub> allowance allocations differently from new units locating elsewhere in the Transport Rule region without initial allowance allocations.

As part of this NODA, EPA is requesting comment on all aspects of how allowances for covered units locating on tribal lands should be allocated. Specifically, EPA requests comment on how, in the final Transport Rule FIPs, EPA should allocate allowances to any covered units that are constructed in Indian country in the proposed Transport Rule region in the future. EPA is also requesting comment on how any such allowance allocation methodology should, if at all, affect state budgets or allowance allocations to existing units and what further action, if any, EPA should take to work with Tribes and affected states to resolve this issue in the event any covered units are constructed in Indian Country in the proposed Transport Rule region. Finally, EPA requests comment on how such allocations should be addressed in a state that has submitted a SIP providing for state allocation of allowances in the proposed Transport Rule trading programs.

#### **VIII. Provisions for States To Submit Transport Rule SIPs or Abbreviated SIPs Providing for State Allocation of Allowances in Proposed Transport Rule Trading Programs**

The proposed Transport Rule explains that "by promulgating these Transport Rule FIPs, EPA would in no way affect the right of states to submit, for review and approval, a SIP that replaces the Federal requirements of the FIP with state requirements. In order to replace the FIP in a state, the state's SIP must provide adequate provisions to prohibit NO<sub>x</sub> and SO<sub>2</sub> emissions that contribute significantly to nonattainment or interfere with maintenance [of the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS] in another state or states \* \* \* EPA is taking comment on all aspects of how a state could replace the Transport Rule FIP with a SIP and on what the SIP approval criteria should be." 75 FR 45342.

EPA received comments suggesting that EPA allow states to replace EPA's

allowance allocation provisions in the proposed Transport Rule trading programs by state-developed allocation provisions. Commenters referenced the two alternatives provided to states by EPA in the CAIR trading programs where: (1) EPA adopted a rule and model trading regulations under which states that adopted, as state SIP trading programs, the model regulations (with only certain limited changes allowed, *e.g.*, in the allocation provisions) could participate in the EPA-administered CAIR trading programs; and (2) EPA adopted a rule allowing states to adopt in SIPs provisions replacing only certain provisions in the CAIR FIPs (*e.g.*, the allocation provisions) and to remain in the CAIR trading programs under the CAIR FIPs. Under both approaches, the covered units in the state participated in the CAIR trading programs, albeit with state-, rather than EPA-, determined allocations.

In the comment period on the proposed Transport Rule FIP, EPA received comments supporting these two types of approaches for allowing states to replace EPA allocations under the proposed Transport Rule trading programs by state allocations. EPA is therefore requesting comment—in conjunction with comment on the alternative allocation methodologies—on both of the following two approaches, which are analogous to the approaches adopted under the CAIR trading programs. These approaches would allow states to—and would provide the only ways that states could—allocate allowances and participate in the proposed Transport Rule trading programs.

Under the first approach, EPA would adopt new provisions, as part of the proposed Transport Rule FIP that would allow a state to submit a SIP (referred as an abbreviated SIP) that would modify specified provisions of the proposed Transport Rule FIP trading programs. Specifically, the abbreviated SIP would substitute state allocation provisions (for entities other than opt-in units)—for control periods in years after 2012 and applicable to a proposed Transport Rule FIP trading program—in lieu of the current allocation provisions (except those for opt-in units) under those proposed Transport Rule FIP program. The Transport Rule FIP provisions that could be replaced would be proposed §§ 97.411(a) and (b) and 97.412 (in the proposed TR NO<sub>x</sub> Annual Trading Program), proposed §§ 97.511(a) and (b) and 97.512 (in the TR NO<sub>x</sub> Ozone Season Trading Program), proposed §§ 97.611(a) and (b) and 97.612 (in the TR SO<sub>2</sub> Group 1 Trading Program), and proposed §§ 97.711(a) and (b) and

97.712 (in the TR SO<sub>2</sub> Group 2 Trading Program). The abbreviated SIP could provide for this substitution of state allocations in one or more of the proposed Transport Rule FIP trading programs applicable to the state.

If the state allocation provisions met certain requirements and the abbreviated SIP did not change any other provisions in the respective proposed Transport Rule FIP trading program, then EPA would approve the abbreviated SIP. In the substitute state allocation provisions, the state could allocate allowances to Transport Rule units (whether existing or new units) or other entities (such as renewable energy facilities) or could auction some or all of the allowances. For EPA approval, the state allocation provisions would have to meet the following requirements. First, the provisions would have to provide that, for each year for which the state allocation provisions would apply, the total amount of control period (annual or ozone season) allowances allocated and, where applicable, auctioned could not exceed the applicable state budget for that year under the relevant proposed Transport Rule FIP trading program.

Second, to the extent the state provisions would provide for allocations for, or auctions open to, existing units (*i.e.*, units covered by proposed § 97.411(a), § 97.511(a), 97.611(a), or 97.711(a), as applicable), the provisions would have to provide that the permitting authority under title V of the CAA for the state would issue final allocations and, if applicable, auction results by May 1 (or January 1 with regard to the NO<sub>x</sub> ozone season program) of the year two years before the year of the control period for which the allowances would be distributed. To the extent the provisions would provide for allocations for or auctions open to new units (*i.e.*, units covered by proposed § 97.411(b) and 97.412, § 97.511(b) and 97.512, 97.611(b) and 97.612, or 97.711(b) and 97.712, as applicable) or any other entities, the provisions would also have to provide that the permitting authority would issue final allocations and, if applicable, auction results by August 1 (or May 1 with regard to the NO<sub>x</sub> ozone season program) of the year of the control period for which the allowances would be distributed. The allocation (or auction) of allowances would be final and could not be subject to modification

(e.g., through an allowance surrender adjusting the allocation).<sup>6</sup>

Third, the state provisions could not change any other provisions of the proposed Transport Rule FIP trading programs with regard to the allowances (e.g., the deadlines for allocation recordation, requirements for transfer or use of allowances, and allocation and recordation of allowances for opt-in units) or any other aspect of such trading programs.<sup>7</sup>

Under the second approach, EPA would adopt a new rule that would provide that, if a state submitted a SIP (referred to as a full SIP) that adopted trading program regulations meeting certain requirements for control period in years after 2012, then EPA would approve the full SIP as correcting the deficiency under CAA section 110(a)(2)(D)(i)(I) in the state's SIP that was the basis for issuance of the comparable proposed Transport Rule FIP. In the state allocation provisions, the state could allocate allowances to Transport Rule units (whether existing or new units, except for opt-in units) or other entities (such as renewable energy facilities) or could auction allowances.

As a result of EPA approval of the state's full SIP under this second approach, the state's trading program set forth in the SIP would be integrated with the comparable proposed Transport Rule FIP trading program (whether or not modified by an abbreviated SIP) covering other states. Moreover, covered sources in the state could participate in the integrated trading program, and the allowances issued under the state trading program would be interchangeable with the allowances issued in the comparable proposed Transport Rule trading program.

Like the abbreviated SIP discussed above, a full SIP providing for state participation in the integrated trading program could include only limited differences from the provisions of the proposed Transport Rule FIP trading program. First, the only differences that

the full SIP could adopt would be in the allocation provisions (other than those for opt-in units). Second, the revised state allocation provisions in the full SIP would have to meet the same requirements as state allocation provisions in an abbreviated SIP. For example, the full SIP would have to provide that, for each year, the total amount of control period (annual or ozone season) allocations would not exceed the applicable state budget for that year. Further, to the extent the full SIP would provide for allocations for existing units, the SIP would have to provide that the permitting authority would issue final allocations by May 1 (or January 1 with regard to the NO<sub>x</sub> ozone season program) of the year two years before the year of the control period for which the allowances would be distributed. To the extent the full SIP would provide for allocations for new units or any other entities, the SIP would also have to provide that the permitting authority would issue final allocations by August 1 (or May 1 with regard to the NO<sub>x</sub> ozone season program) of the year of the control period for which the allowances would be distributed. The allocation of allowances would be final and could not be subject to modification.<sup>8</sup>

It is important to note that, of course, each state would still have the ability to submit other types of SIPs using emissions reduction approaches other than the proposed Transport Rule trading programs to correct the deficiency under CAA section 110(a)(2)(D)(i)(I) in the state's SIP that was the basis for the proposed Transport Rule FIPs. The EPA would review such SIP submissions on a case-by-case basis and intends to provide guidance to states that want to develop and submit such SIPs. However, in order for the state to use the proposed Transport Rule trading programs to correct that deficiency in the SIP, the state would have to submit a full SIP in accordance with this second approach.

In order for a state's allocation provisions in an abbreviated SIP or a full SIP to replace EPA's allocation provisions for a control period in a given year under these two approaches, a state would have to submit the abbreviated SIP or full SIP meeting the requirements of these approaches by a deadline that would provide EPA sufficient time to review and approve the SIP provisions and to record the unit-by-unit allocations or auction results. EPA would need about 6 months—starting from the date of receipt of an abbreviated or full SIP—to complete its review and approval process, which would have to provide an opportunity for public comment on the approval (or disapproval) action. The following tables show, for the allocations or auction results for the control periods in 2012 through 2018, the deadlines that would apply for submission of an abbreviated or full SIP, for submission of the unit-by-unit allocations or auction results for recordation by EPA, and for recordation. These tables assume: Allocation (or auction) and recordation of allowances for existing units under the Transport Rule trading programs one year at a time and about one and one-half years ahead of the year for which the allocations (or auctions) apply; and allocation (or auction) and recordation of allowances for new units and other entities one year at a time and six months after the commencement of the control period for which the allocations (or auction) apply. Because EPA anticipates issuing the final Transport Rule around mid-2011, there would not be sufficient time for states to develop and submit abbreviated or full SIPs with allowance allocation provisions, and for EPA to review and approve such SIP submissions, before September 2011 when EPA would record allocations to existing units for 2012 and 2013. Consequently, the tables assume that the first year for which state allocations might be used, in lieu of EPA allocation, would be 2014.

TABLE III—DEADLINES FOR SUBMISSION OF ABBREVIATED OR FULL SIPs AND UNIT-BY-UNIT ALLOCATIONS OR AUCTION RESULTS AND FOR RECORDATION; ANNUAL TRADING PROGRAMS

First TR control period for which allowances would be allocated or auctioned	Deadline for State submitting abbreviated or full SIP	Deadline for State submitting allocations or auction results for existing units	Deadline for State submitting allocations or auction results for new units and others	Deadline for EPA recording allocations or auction results for existing units	Deadline for EPA recording allocations or auction results for new units and others
2012 .....	NA .....	NA .....	NA .....	September 1, 2011 ...	September 1, 2012.
2013 .....	NA .....	NA .....	NA .....	September 1, 2011 ...	September 1, 2013.

<sup>6</sup> If any auctions were to be conducted, the provisions would have to specify the auction procedures that the permitting authority would use.

<sup>7</sup> However, if auctions were to be conducted, the abbreviated SIP would have to provide that any

allowance auctioned to a covered unit or source would be treated as an allocated allowance, solely for purposes of applying the assurance provisions in the proposed Transport Rule FIP.

<sup>8</sup> In addition, the requirements for state allocation provisions in full SIPs would apply to any auctioned allowances in the same way that is described above with regard to any allowances to be auctioned under abbreviated SIPs.

TABLE III—DEADLINES FOR SUBMISSION OF ABBREVIATED OR FULL SIPs AND UNIT-BY-UNIT ALLOCATIONS OR AUCTION RESULTS AND FOR RECORDATION; ANNUAL TRADING PROGRAMS—Continued

First TR control period for which allowances would be allocated or auctioned	Deadline for State submitting abbreviated or full SIP	Deadline for State submitting allocations or auction results for existing units	Deadline for State submitting allocations or auction results for new units and others	Deadline for EPA recording allocations or auction results for existing units	Deadline for EPA recording allocations or auction results for new units and others
2014 .....	November 1, 2011 ....	May 1, 2012 .....	August 1, 2014 .....	June 1, 2012 .....	September 1, 2014.
2015 .....	November 1, 2012 ....	May 1, 2013 .....	August 1, 2015 .....	June 1, 2013 .....	September 1, 2015.
2016 .....	November 1, 2012 ....	May 1, 2014 .....	August 1, 2016 .....	June 1, 2014 .....	September 1, 2016.
2017 .....	November 1, 2014 ....	May 1, 2015 .....	August 1, 2017 .....	June 1, 2015 .....	September 1, 2017.
2018 .....	November 1, 2015 ....	May 1, 2016 .....	August 1, 2018 .....	June 1, 2016 .....	September 1, 2018.

TABLE IV—DEADLINES FOR SUBMISSION OF ABBREVIATED OR FULL SIPs AND UNIT-BY-UNIT ALLOCATIONS OR AUCTION RESULTS AND FOR RECORDATION; OZONE SEASON TRADING PROGRAMS

First TR control period for which allowances would be allocated or auctioned	Deadline for State submitting abbreviated or full SIP	Deadline for State submitting allocations or auction results for existing units	Deadline for State submitting allocations or auction results for new units and others	Deadline for EPA recording allocations or auction results for existing units	Deadline for EPA recording allocations or auction results for new units and others
2012 .....	NA .....	NA .....	NA .....	September 1, 2011 ...	June 1, 2012.
2013 .....	NA .....	NA .....	NA .....	September 1, 2011 ...	June 1, 2013.
2014 .....	November 1, 2011 ....	May 1, 2012 .....	May 1, 2014 .....	June 1, 2012 .....	June 1, 2014.
2015 .....	November 1, 2012 ....	May 1, 2013 .....	May 1, 2015 .....	June 1, 2013 .....	June 1, 2015.
2016 .....	November 1, 2013 ....	May 1, 2014 .....	May 1, 2016 .....	June 1, 2014 .....	June 1, 2016.
2017 .....	November 1, 2014 ....	May 1, 2015 .....	May 1, 2017 .....	June 1, 2015 .....	June 1, 2017.
2018 .....	November 1, 2015 ....	May 1, 2016 .....	May 1, 2018 .....	June 1, 2016 .....	June 1, 2018.

As discussed above, a trading program adopted by a state in a full SIP and approved by EPA under the second approach would be fully integrated with any comparable proposed Transport Rule FIP trading program (*i.e.*, the proposed TR NO<sub>x</sub> Annual, TR NO<sub>x</sub> Ozone Season, TR SO<sub>2</sub> Group 1, or TR SO<sub>2</sub> Group 2 Trading Program respectively) for other states. This would apply whether the comparable proposed Transport Rule FIP program for other states was modified by an abbreviated SIP approved by EPA under the first approach or was not modified by an abbreviated SIP. The integration of these three types of trading programs would be accomplished primarily through the definitions of the terms, “TR NO<sub>x</sub> Annual allowance”, “TR NO<sub>x</sub> Ozone Season allowance”, “TR SO<sub>2</sub> Group 1 allowance”, and “TR SO<sub>2</sub> Group 2 allowance” in the full SIPs approved by EPA and the proposed TR FIP trading programs (whether or not the programs were modified by abbreviated SIPs). “TR NO<sub>x</sub> Annual allowance” would be defined in the state and proposed Transport Rule FIP trading programs as including allowances issued under any of the following trading programs: The comparable EPA-approved state trading programs; the comparable proposed Transport Rule FIP trading program with EPA-approved state allocation provisions; and the proposed Transport Rule FIP trading program with EPA allocation provisions. Similarly, the

definitions in the state and Transport Rule FIP trading programs of “TR NO<sub>x</sub> Ozone Season allowance”, “TR SO<sub>2</sub> Group 1 allowance”, and “TR SO<sub>2</sub> Group 2 allowance” respectively would include allowances issued under all three types of trading programs. As a result, allowances issued in one approved state trading program would be interchangeable with allowances issued in the comparable Transport Rule FIP trading program (whether or not modified by an abbreviated SIP), and all these allowances could be used for compliance with the allowance-holding requirements (to cover emissions and to meet assurance provision requirements) in all three types of trading programs.

The integration of state and the proposed Transport Rule FIP trading programs would also be reflected in the definitions of “TR NO<sub>x</sub> Annual Trading Program,” “TR NO<sub>x</sub> Ozone Season Trading Program”, “TR SO<sub>2</sub> Group 1 Trading Program”, and “TR SO<sub>2</sub> Group 2 Trading Program”. Each of these definitions in the state and Transport Rule FIP trading programs would expressly encompass the comparable proposed Transport Rule FIP trading programs (whether or not modified by an abbreviated SIP) and the comparable EPA-approved state full SIP trading program.

Dated: December 30, 2010.

**Brian McLean,**  
*Director, Office of Atmospheric Programs.*  
 [FR Doc. 2011–109 Filed 1–6–11; 8:45 am]  
**BILLING CODE 6560–50–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1170]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to