

EPA—APPROVED KANSAS SOURCE—SPECIFIC REQUIREMENTS—Continued

Name of source	Permit or case No.	State effective date	EPA approval date	Explanation
(4) Westar Energy, Inc .....	.....	2/29/08	12/27/11, [Insert <b>Federal Register</b> citation].	Certain provisions withdrawn from plan as identified in letter dated 12/1/11 from Kansas.
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\* \* \* \* \* (e) \* \* \*

EPA—APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
(33) Regional Haze Plan for the first implementation period.	Statewide .....	11/9/09	12/27/11, [Insert <b>Federal Register</b> citation].	Certain provisions withdrawn from plan as identified in letter dated 12/1/11 from Kansas.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 97**

[EPA–HQ–OAR–2009–0491; FRL–9609–9]

RIN 2060–AR01

**Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone**

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, EPA is concluding that emissions from Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states. Each of these states except Oklahoma is already included in the annual NO<sub>x</sub> program that was finalized in July 2011. However, this rule does not affect that program.

EPA is finalizing Federal Implementation Plans (FIPs) to address the emissions in each of these states except for Kansas, for which EPA is not finalizing a FIP at this time. The FIPs apply the requirements of the ozone season NO<sub>x</sub> program in the Transport Rule (Federal Implementation Plans to

Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States) to sources in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin. In addition, this action finalizes the budgets; associated variability limits, new unit set-asides, and Indian country new unit set-asides; and unit-level allowance allocations for each state under the FIPs.

**DATES:** This final rule is effective on January 26, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–EPA–HQ–OAR–2009–0491. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed on 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA West, Room B102, 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. This Docket Facility is open from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The

Docket telephone number is (929) 566–1742, fax (202) 566–1741.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, contact Ms. Gabrielle Stevens, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343–9252; fax number: (202) 343–2356; email address: [stevens.gabrielle@epa.gov](mailto:stevens.gabrielle@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Glossary of Terms and Abbreviations**

The following are abbreviations of terms used in final rule:

- CFR Code of Federal Regulations
- EGU Electric Generating Unit
- FIP Federal Implementation Plan
- FR **Federal Register**
- EPA U.S. Environmental Protection Agency
- ICR Information Collection Request
- NAAQS National Ambient Air Quality Standards
- NODA Notice of Data Availability
- NO<sub>x</sub> Nitrogen Oxides
- SIP State Implementation Plan
- OMB Office of Management and Budget
- PM<sub>2.5</sub> Fine Particulate Matter, Less Than 2.5 Micrometers
- PM Particulate Matter
- RIA Regulatory Impact Analysis
- SNPR Supplemental Notice of Proposed Rulemaking
- SO<sub>2</sub> Sulfur Dioxide
- TSD Technical Support Document

**II. General Information**

*A. Does this action apply to me?*

*Regulated Entities.* Entities regulated by this action primarily are fossil fuel-

fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate

electricity for sale and steam. Regulated categories and entities include:

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

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 97.404, 97.504, and 97.604 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of this rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the EPA Web site at <http://www.epa.gov/crossstaterule>.

*C. How is the preamble organized?*

- I. Glossary of Terms and Abbreviations
- II. General Information
- III. Executive Summary
  - A. EPA's Authority for This Rule
  - B. Finalizing FIPs To Address Significant Contribution to Nonattainment and Interference With Maintenance in:
    - i. Iowa
    - ii. Michigan
    - iii. Missouri
    - iv. Oklahoma
    - v. Wisconsin
  - C. Kansas
  - D. Allegan County, Michigan, Receptor
  - E. Ozone Season NO<sub>x</sub> Emission Budgets for Five States
  - F. Implementation of the Transport Rule NO<sub>x</sub> Ozone Season Trading Program
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act
- L. Judicial Review

**III. Summary**

In this final rule, EPA finalizes its conclusion that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states. These states' final ozone-season NO<sub>x</sub> budgets are presented and discussed in section III.E below, and more detailed information can be found in the "Determination of State Budgets for the Final Ozone Supplemental of the Transport Rule" TSD found in the docket for this rulemaking.

In addition, EPA is finalizing FIPs to address the interstate transport requirements of the relevant NAAQS using a program created in the Transport Rule<sup>1</sup> that was finalized on July 6, 2011 (76 FR 48208, August 8, 2011). EPA is implementing the ozone season NO<sub>x</sub> program in the Transport Rule (with minor revisions) as the FIPs for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin to address the emissions identified as significantly contributing to nonattainment or interfering with maintenance with respect to the 1997 ozone NAAQS. With respect to Kansas, EPA is not finalizing the proposed FIP because we do not have the authority to do so at this time, as discussed in section III.C below.

As explained in the final Transport Rule preamble (76 FR 48208), EPA improved and updated both steps of its significant contribution analysis from

the Transport Rule proposal. EPA updated its modeling platforms and modeling inputs in response to public comments received on the proposed Transport Rule and subsequent Notices of Data Availability (NODAs), and performed other standard updates. It updated and improved the modeling platforms and modeling inputs used to identify states with contributions to certain downwind receptors that meet or exceed specified air quality thresholds. It also updated and improved its analysis for identifying any emissions within such states that constitute the state's significant contribution to nonattainment or interference with maintenance. Therefore, the results of the analysis conducted for the final Transport Rule differed somewhat from the results of the analysis conducted for the proposal.

With respect to the 1997 ozone NAAQS, the analysis EPA conducted for the Transport Rule proposal did not identify Wisconsin, Iowa, and Missouri as states that significantly contribute to nonattainment and/or interfere with maintenance of the ozone NAAQS in another state. However, the analysis conducted for the final Transport Rule showed that emissions from these three states interfere with maintenance of the ozone NAAQS in another state. The analysis also showed that emissions from Missouri significantly contribute to nonattainment in another state. Additionally, the analysis identified two ozone maintenance receptors that were not identified by the modeling conducted for the proposal. These two ozone maintenance receptor sites are located in Allegan County, Michigan and Harford County, Maryland. Five states (Iowa, Kansas, Michigan, Oklahoma, and Wisconsin), which EPA identified as interfering with maintenance problems at the Allegan County and/or Harford County receptors, based on modeling for the final rule, uniquely contribute to these receptors, *i.e.*, absent these receptors the states would not be covered by the Transport Rule ozone-season program (although the states, except for Oklahoma, are covered by the Transport Rule annual programs). EPA did not issue FIPs with respect to the 1997 ozone NAAQS or finalize ozone season

<sup>1</sup> Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States; Final Rule. Available on the Web at <http://www.epa.gov/crossstaterule>.

NO<sub>x</sub> budgets for these states in the final Transport Rule. Instead, EPA published a supplemental notice of proposed rulemaking (76 FR 40662) to provide an opportunity for public comment on our conclusion that these states significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS.

EPA did not change its methodology between the proposed Transport Rule and the final Transport Rule for identifying upwind states that significantly contribute to nonattainment or interfere with maintenance in other states; nor did EPA change its methodology for identifying receptors of concern with respect to maintenance of the 1997 ozone NAAQS. The final Transport Rule's air quality modeling identified the new states and new receptors described above based on modeling using updated input information (including emission inventories), much of which was provided to EPA through public comment on the proposal and subsequent NODAs.

In the proposal for this supplemental rulemaking, EPA took comment only on (a) its conclusions that the six states identified above have emissions that significantly contribute to nonattainment and/or interfere with maintenance of the 1997 ozone NAAQS and (b) its decision to use the final Transport Rule programs as the FIPs to address these emissions in the six states.

EPA did not reconsider or take comment on any aspect of the final Transport Rule, including any aspect of the methodology used to identify receptors for nonattainment; the methodology used to identify receptors for maintenance; the methodology used to identify any specific state's significant contribution and interference with maintenance; the methodologies used to establish state budgets, variability limits, and state assurance levels; and the methodologies used to allocate allowances to existing units, to establish new unit set-asides and Indian country new unit set-asides, and to allocate allowances in these set-asides. EPA provided an adequate opportunity for public comment on all of these issues during the comment period for the proposed Transport Rule and during the comment periods for the associated NODAs.<sup>2</sup> EPA received numerous

<sup>2</sup> Notice of Data Availability Supporting Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (75 FR 53613; September 1, 2010). This NODA provided additional information on an updated version of the power sector modeling platform and data inputs EPA proposed to use to support the final Transport Rule.

comments on the proposed Transport Rule and on the associated NODAs and considered all significant comments received during the comment periods for these actions before finalizing the Transport Rule. Responses to those comments are available in the public docket for the final Transport Rule.

In the proposal for this rulemaking, EPA also did not reconsider or take comment on the emission inventories used for the final Transport Rule modeling, including the emission inventories for the six states identified above. EPA provided ample opportunity for comment on these inventories during the comment period for the proposed Transport Rule and the comment periods for the NODAs associated with that proposal. Inventories for all states included in the modeling domain were made available for public comment during that process. The public had ample reason to comment on the inventories for these six states, moreover, not only because these inventories affect the modeling for all states in the modeling domain, but also because EPA was proposing to include all six states in at least one of the Transport Rule trading programs and the inventories were used in the analysis supporting that proposal. For instance, EPA proposed to include Kansas and Michigan in the ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and annual SO<sub>2</sub> programs; proposed to include Oklahoma in the ozone-season NO<sub>x</sub> program; and proposed to include Iowa, Missouri, and Wisconsin in the SO<sub>2</sub> and annual NO<sub>x</sub> programs. Commenters therefore had reason to look closely at all of the emission data for all six states that EPA made available in the proposal and the NODAs. Ultimately, EPA made numerous changes to these inventories in response to public comments.

#### A. EPA's Authority for this Rule

The statutory authority for this action is provided by the CAA, as amended, 42 U.S.C. 7401 *et seq.* Section 110(a)(2)(D) of the CAA, often referred to as the "good neighbor" provision of the Act, requires states to prohibit certain emissions because of their impact on air quality in downwind states.

Notice of Data Availability Supporting Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone: Revisions to Emission Inventories (75 FR 66055; October 27, 2010).

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 (76 FR 1109; January 7, 2011).

Specifically, it requires all states, within 3 years of promulgation of a new or revised NAAQS, to submit SIPs that prohibit certain emissions of air pollutants because of the impact they would have on air quality in other states. 42 U.S.C. § 7410(a)(2)(D). Section 301(a)(1) of the CAA gives the Administrator of EPA general authority to prescribe such regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 7601(a)(1). Section 110(c)(1) requires the Administrator to promulgate a FIP at any time within 2 years after the Administrator (a) finds that a state has failed to make a required SIP submission or that such a submission is incomplete or (b) disapproves a SIP submission, unless the state corrects the deficiency and the Administrator approves the SIP revision. 42 U.S.C. 7410(c)(1). Tribes are not required to submit state implementation plans. However, 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 obtain EPA approval of an implementation plan. *See* 40 CFR 49.11(a).

For each FIP in this rule, EPA either (a) found that the state has failed to make a required section 110(a)(2)(D)(i)(I) SIP submission or (b) disapproved a SIP submission. In addition, EPA has determined, in each case, that there has been no approval by the Administrator of a SIP submission correcting the deficiency prior to promulgation of the FIP. EPA's obligation to promulgate a FIP arose when the finding of failure to submit or disapproval was made, and in no case has it been relieved of that obligation. (The specific findings made and actions taken by EPA are described in greater detail in the TSD entitled "Status of CAA 110(a)(2)(D)(i)(I) SIPs Supplemental Rule TSD," which is available in the public docket for this rule.)

As noted in the SNPR, EPA proposed a SIP Call under CAA 110(k)(5) for Kansas (76 FR 763, January 6, 2011), based on its conclusion that Kansas significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS. On March 9, 2007, EPA approved a section 110(a)(2)(D)(i) SIP submission from the state of Kansas for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS (72 FR 10608, March 9, 2007). This SIP submission did not rely on compliance with the Clean Air Interstate Rule

(CAIR)<sup>3</sup> to satisfy the requirements of section 110(a)(2)(D)(i)(I). The analysis for the proposed Transport Rule, however, demonstrated that emissions from Kansas significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in other states. Because the approved Kansas SIP does not prohibit these emissions, EPA proposed to find it substantially inadequate to meet the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. EPA intends to take final action on this proposal concurrent with this action or shortly thereafter. See section C below for more information on Kansas.

The five states addressed in this final rule for which EPA's analysis identifies the state's full reduction responsibility under section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS are Iowa, Kansas, Michigan, Oklahoma, and Wisconsin. The one state addressed in this final rule for which EPA's analysis identifies reductions that are necessary but may not be sufficient to satisfy section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS is Missouri. This is because, in the final Transport Rule air quality modeling control scenario in 2014, Missouri is estimated to be significantly contributing to residual nonattainment and/or interfering with residual maintenance at receptors in Brazoria and Harris Counties (Houston) in Texas, and Houston is the only area projected to remain in nonattainment in 2014. As described in the final Transport Rule (TR) preamble (e.g., Page 48210) 76 FR 48208, August 8, 2011, only one area (Houston) is projected to remain in nonattainment for the 1997 ozone NAAQS in 2014 with the Transport Rule in place. For the upwind states linked to the receptors in this area (including Missouri), additional reductions may be necessary to fully eliminate each state's significant contribution to nonattainment and/or interference with maintenance. Missouri was also found to contribute above the threshold to the new maintenance receptor, Allegan County, Michigan.<sup>4</sup>

<sup>3</sup> Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call promulgated May 12, 2005 (70 FR 25162).

<sup>4</sup> See the Air Quality Modeling Final Rule TSD (EPA-HQ-OAR-2009-0491-4140). The estimated average and maximum design values for the receptors in Brazoria and Harris Counties (monitor identification numbers 480391004, 482010051, 482010055) in the final air quality modeling of the control scenario were 84.4, 86.5 ppb; 84.1, 88.6 ppb; and 91.1, 93.2 ppb, respectively. Thus, the first two receptors were estimated to have residual

EPA has not yet determined whether additional reductions in ozone-forming emissions are necessary to address Missouri's significant contribution to downwind nonattainment and interference with maintenance, which may not be fully quantified in this rulemaking with respect to the 1997 ozone NAAQS. Additional technical analysis will be necessary to complete this determination. See section B.iii below for further discussion.

#### *B. Finalizing FIPs to Address Significant Contribution to Nonattainment and Interference with Maintenance*

EPA concludes in this final rule that application of the methodologies to identify nonattainment and maintenance receptors and to determine significant contribution to nonattainment and interference with maintenance with respect to the 1997 ozone NAAQS, as described in the final Transport Rule, demonstrates that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in other states. EPA also concludes in this final rule that the Transport Rule NO<sub>x</sub> Ozone Season Trading Program set forth in the final Transport Rule (with minor revisions discussed in section III.F of this preamble) should be used as the FIP for five of the six states with regard to the 1997 ozone NAAQS. As discussed below, EPA received comments concerning whether, and in what amount, some of the states significantly contribute or interfere with maintenance. EPA did not receive any comments claiming that EPA should not use the Transport Rule NO<sub>x</sub> Ozone Season Trading Program as the FIP if the state is found to significantly contribute or interfere with maintenance.

##### *i. Iowa*

EPA is finalizing a FIP for Iowa that, through implementation of the Transport Rule ozone season program, limits power plant NO<sub>x</sub> emissions starting in the 2012 ozone season.

The analysis for the final Transport Rule identified Iowa as a state that interferes with maintenance of the 1997 ozone NAAQS only for a newly-identified maintenance receptor in Allegan County, Michigan. EPA specifically requested comment in the proposed notice for this supplemental

maintenance issues, while the latter receptor is estimated to have a residual nonattainment issue. Missouri contributes at or above the one percent contribution threshold to all three of these receptors. (Note that average design values are used to assess attainment/nonattainment and maximum design values are used to assess maintenance.)

action on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Iowa's significant contribution to nonattainment and/or interference with maintenance of the 1997 ozone NAAQS. There were no public comments that identified any errors in EPA's determination of state budgets for Iowa, which demonstrated EPA's quantification of emission reductions necessary to eliminate significant contribution and interference with maintenance.

One commenter noted that inclusion of Iowa is justified. Another commenter questioned the Allegan County, Michigan receptor. For more information on the Allegan receptor, see section D below in this preamble. Other comments concerning the 2005 baseline, and "sunk costs", are outside the scope of the proposed rule in this rulemaking, and, while these issues are not reopened in this rulemaking, EPA notes the issues have been addressed in the record of the final Transport Rule. See the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov), EPA-HQ-OAR-2009-0491.

##### *ii. Michigan*

EPA is finalizing a FIP for Michigan that, through implementation of the Transport Rule ozone season program, limits power plant NO<sub>x</sub> emissions starting in the 2012 ozone season.

In its 2010 Transport Rule proposal, EPA proposed to determine that Michigan significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS and also proposed to include Michigan in the Transport Rule ozone-season NO<sub>x</sub> program. In the analysis conducted for the final Transport Rule, Michigan is linked only to a newly-identified ozone maintenance receptor in Harford County, Maryland. EPA specifically requested comment in the proposed notice for this supplemental action on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Michigan's interference with maintenance of the 1997 ozone NAAQS.

There were two major comments relating to Michigan. One comment regarded the use of the FIP and requested a delay for a minimum of 18 months so the state could submit an approvable SIP. The matter of EPA's authority under the Clean Air Act is discussed in detail in the final Transport Rule and above in section III.A. The second comment addressed the Indian country new unit set-aside and suggested that the state is the appropriate authority to allocate new source allowances, even to units located

on tribal lands. The comment, concerning the authority to allocate allowances from the Indian country new unit set-aside, is outside the scope of the proposed rule in this rulemaking, and, while issues concerning the Indian country new unit set-aside are not reopened in this rulemaking, EPA notes the issues have been addressed in the preamble to the final Transport Rule at 76 FR 48317 and 48293.

### iii. Missouri

EPA is finalizing the FIP for Missouri that, through implementation of the Transport Rule ozone season program, limits power plant NO<sub>x</sub> emissions starting in the 2012 ozone season.

The analysis for the final Transport Rule identified Missouri as a state that significantly contributes to nonattainment and/or interferes with maintenance of the 1997 ozone NAAQS in Harris County, Texas, Brazoria County, Texas, and Allegan County, Michigan. EPA requested comment in the proposed notice for this supplemental action specifically on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Missouri's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

One commenter challenged the methodology used by EPA to quantify significant contribution, arguing that it was flawed because EPA's base year does not include CAIR and does not represent current air quality. As explained in the proposal, EPA did not reopen for comment the methodology developed in the final Transport Rule to quantify emissions that significantly contribute to or interfere with maintenance in another state. These comments are outside the scope of the proposed rule in this rulemaking, and, while these issues are not reopened in this rulemaking, the issues have been addressed in the record of the final Transport Rule.

One commenter stated that the proposal for this action would not require full elimination of Missouri's significant contribution. EPA stated in the preamble to this rule's proposal that for Missouri, our analysis identifies reductions that are necessary but may not be sufficient to satisfy section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. This is because Missouri is estimated to be significantly contributing to nonattainment and/or interfering with maintenance in Brazoria and Harris Counties in Texas, as demonstrated in the final Transport Rule air quality modeling of the control scenario in 2014 (see the Air Quality

Modeling Final Rule TSD in the docket to this rulemaking, for additional details).

EPA intends to conduct further analysis and provide appropriate guidance and/or rulemaking to address any remaining significant contribution to nonattainment and interference with maintenance with respect to the 1997 ozone NAAQS for any state (e.g., Missouri) identified in the final Transport Rule and in the associated supplemental notice, for which EPA was unable to fully quantify the emissions that must be prohibited to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS.

A commenter questioned whether the compliance deadline established by EPA in the FIP with regard to the 1997 ozone season NAAQS is feasible or valid in light of, among other things, the commenter's suggestion that the Transport Rule NO<sub>x</sub> ozone season allowance market will not be viable. EPA has determined it is feasible for sources in Missouri to meet the 2012 budget finalized in this rule. The 2012 budget relies on control strategies that Missouri sources are already preparing to implement for the annual NO<sub>x</sub> program. These include running existing or already planned controls and making changes in dispatch (how electricity is distributed across units at a facility) that could include shifting generation from higher emitting units to lower emitting units. Sources also have further flexibility through the opportunity to purchase allowances. Twenty states have already been finalized as participants in the Transport Rule ozone season program and NO<sub>x</sub> ozone season allowances have already been traded. Trading began prior to the formal distribution of allowances, and trading volume has increased since distribution, with prices steadily decreasing. This market is following a common pattern of emission allowance markets in their introductory stages—prices are initially high and then drop as parties become familiar with the characteristics of the market through repeated iterations of bids, offers, and trades. Observed market allowance prices for the NO<sub>x</sub> ozone season program are trending toward the projected equilibrium values included in EPA's analysis of the final Transport Rule.<sup>5</sup>

<sup>5</sup> Recent price estimates provided in the subscription publication Argus Air Daily, an international provider of price data related to the energy sector. Also see the Regulatory Impact Assessment for the final Transport Rule at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2009-0491-4547>.

### iv. Oklahoma

EPA is finalizing the FIP for Oklahoma that, through implementation of the Transport Rule ozone season program, limits power plant NO<sub>x</sub> emissions starting in the 2012 ozone season.

In its 2010 Transport Rule proposal, EPA proposed to determine that Oklahoma significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS and also proposed to include Oklahoma in the Transport Rule ozone-season program. In the analysis conducted for the final Transport Rule, Oklahoma was linked only to a newly-identified ozone maintenance receptor in Allegan County, Michigan. Oklahoma was not linked to any nonattainment receptors. EPA specifically requested comment in the proposed notice for this supplemental action on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Oklahoma's significant contribution to nonattainment and/or interference with maintenance of the 1997 ozone NAAQS.

Several commenters generally question the validity of EPA's conclusion that Oklahoma interferes with maintenance of the 1997 ozone NAAQS in downwind states, especially regarding the Allegan County, Michigan receptor. See the discussion of the Allegan receptor below in section III.D. Other comments regarding the CAMx air quality model, emissions inventory data, and choice of base year are outside the scope of the proposed rule in this rulemaking, and, while these issues are not reopened in this rulemaking, the issues have been addressed in the record of the final Transport Rule and this supplemental rule.

EPA also received comments regarding the size of the proposed ozone season NO<sub>x</sub> budget for Oklahoma. Some commenters argued the Oklahoma ozone season budget was incorrectly calculated because it assumed reductions that could not be feasibly achieved by the 2012 ozone season. The analysis conducted for the proposal showed that reductions in Oklahoma could be achieved through, among other actions, installation of low-NO<sub>x</sub> burners (LNBS) at about 4.4 gigawatts (GW) of coal-fired generation capacity in the state, and the shifting of dispatch to cleaner generators. Commenters disputed the ability of sources in Oklahoma to effect sufficient reductions through either of these strategies in time to meet the proposed 2012 state budget. Each identified issue is addressed below.

As to the LNBs, in the final Transport Rule, EPA found that it is technically feasible to install LNBs within a 6-month period. The shutdown of a unit and physical installation of LNBs at the unit necessarily occurs near the end of the 6-month period. Because of the timing of this final action, the units in Oklahoma would have to shut down to install the LNBs during the ozone season—the summer peak demand period for electricity in Oklahoma. Taking these units off-line during the summer peak demand period would reduce the amount of available capacity in the reliability subregion of the Southwest Power Pool that includes Oklahoma. EPA's policy case modeling suggests that this reduction in available capacity could shift this subregion below its assured planning reserve margin which is based on North American Electricity Reliability Corporation (NERC) planning reserve margins. See "Determination of State Budgets for the Final Ozone Supplemental of the Transport Rule" TSD. Because physical installation of the LNBs during the 2012 summer peak on units in Oklahoma could potentially cause the region to miss this important reliability target, EPA concludes that installation of these LNBs during the ozone season is not technically feasible.<sup>6</sup> Therefore, EPA is assuming that no low-NO<sub>x</sub> burners can be installed in Oklahoma prior to or during the 2012 ozone-season and is setting the Oklahoma 2012 ozone season NO<sub>x</sub> budget at a level that reflects emission reductions achievable through actions (such as changes in generation unit dispatch) that do not include additional LNB installations. EPA is setting the Oklahoma ozone season NO<sub>x</sub> budget for 2013 and beyond at the level that was proposed, *i.e.*, to reflect NO<sub>x</sub> levels achievable with additional LNB installations that can be completed before the 2013 ozone season without necessitating the shutdown of units during the summer peak demand period in 2012.

EPA does not believe that this issue relating to LNB installation timing applies to the other four states for which EPA is finalizing a FIP in this action. Because those four states are already

required to meet Transport Rule annual NO<sub>x</sub> reduction requirements (which start January 2012), and were notified of that requirement with the July 6, 2011 finalization of the Transport Rule, physical installation of LNBs near the end of the 6-month period for LNBs are not expected to occur during peak electricity demand periods. Moreover, information in the record indicates that, for units in Iowa, Michigan, Missouri, and Wisconsin, LNBs were already planned and are in the process of being installed. Therefore, EPA believes that the issue raised is unique to Oklahoma and does not justify adjusting the 2012 ozone season budgets for the four other states subject to this final action. As discussed below, EPA is finalizing the 2012 ozone season budgets as proposed for the four states, except for a few corrections in the Michigan and Wisconsin budgets addressed in section III.E, below.

Some commenters also argued that EPA erred in assuming emissions from oil/gas steam units could be significantly reduced by the 2012 ozone season. Including Oklahoma, there are a total of five ozone-season-only states subject to the Transport Rule—that is, five states that are subject to the ozone-season NO<sub>x</sub> program without also being subject to the annual NO<sub>x</sub> program. The ozone-season budgets for the four other states (Mississippi, Arkansas, Florida, and Louisiana) were finalized in the final Transport Rule which was signed and widely disseminated in July 2011. EPA did not finalize an ozone-season budget for Oklahoma at that time. EPA is finalizing the ozone-season budget for Oklahoma more than 5 months after the budgets for the other states included in the ozone-season program were finalized and less than six months before the start of the 2012 ozone season. In this respect, therefore, Oklahoma is uniquely situated.

EPA believes that units in Oklahoma will have sufficient time for compliance planning to include modest adjustments of NO<sub>x</sub> emissions at covered sources in Oklahoma (*e.g.*, fine-tuning of existing combustion controls). However, EPA agrees that Oklahoma utilities may not have time between finalization of this rule and the 2012 ozone season to realign firm power supply to dispatch cleaner, more cost-effective sources of generation to meet local electricity demand that is currently being met by oil/gas steam generators. Therefore, EPA is adjusting the Oklahoma state budget for the 2012 ozone season specifically on the basis of revised projected emissions at oil/gas steam generators reflecting an immediate-term dispatch pattern that maintains the firm power

supply arrangements already in place to serve local electricity demand. In light of Oklahoma's unique situation, EPA is assuming for the purposes of this adjustment that projected 2012 emissions from oil/gas steam units in Oklahoma will be consistent with recently observed dispatch of this class of units in the state. EPA believes this situation is unique to Oklahoma due to the fact that sources in the other states covered by this rulemaking are already covered by a pre-existing Transport Rule FIP addressing NO<sub>x</sub> emission control, and that these sources will have had substantially more compliance planning time to consider adjustments to dispatch in advance of the 2012 ozone season.

EPA believes that the original projections of Oklahoma EGU emissions of ozone-season NO<sub>x</sub> at the Transport Rule's threshold cost-per-ton level remain achievable, through a combination of reduction measures, including LNB installations and increased dispatch of cleaner generating sources, in time for compliance in the 2013 ozone season and beyond, under the state budget as proposed. EPA is only adjusting the final Oklahoma state budget for the 2012 ozone season. See the technical support document, "Determination of 2012 Ozone Season State Emission Budgets for the Final Transport Rule Ozone Supplemental," in the docket to this rulemaking for more details.

#### v. Wisconsin

EPA is finalizing the FIP for Wisconsin that, through implementation of the Transport Rule ozone season program, limits power plant NO<sub>x</sub> emissions starting in the 2012 ozone season.

The analysis for the final Transport Rule identified Wisconsin as a state that interferes with maintenance only for a newly-identified 1997 ozone NAAQS maintenance receptor in Allegan County, Michigan. EPA specifically requested comment in the proposed notice for this supplemental action on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Wisconsin's significant contribution to nonattainment and interference of the 1997 ozone NAAQS. There were no comments with respect to Wisconsin's significant contribution to nonattainment and/or interference of the 1997 ozone NAAQS or with respect to EPA's proposed use of the Transport Rule ozone season program as the FIP.

#### C. Kansas

EPA is finalizing its determination that Kansas significantly contributes to

<sup>6</sup>Because, in the case of Oklahoma, physical installation of LNBs during the latter portion of the 6-month period would occur during the summer peak demand period, this conclusion concerning Oklahoma is distinguishable from EPA's general conclusion that installation of LNBs in 6 months is technically feasible. See EPA-HQ-OAR-2009-0491-4529. Physical installation of LNBs near the end of a 6-month period and outside of the summer peak demand period will not threaten achievement of target planning reserve margins and, thus, electric reliability.

nonattainment or interferes with maintenance in another state with respect to the 1997 ozone NAAQS. EPA is not finalizing the proposed FIP for Kansas at this time. As explained below, EPA intends to take final action on its proposed SIP Call for Kansas concurrent with this action or shortly thereafter. If Kansas fails to submit a SIP that meets the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone standards by any deadline established in any final SIP Call, EPA would take action as appropriate to satisfy its obligation to promulgate a FIP to address the statutory requirements.

The analysis for the final Transport Rule and the analysis for the 2010 proposal both identified Kansas as a state that interferes with maintenance of the 1997 ozone NAAQS in another state. In its 2010 Transport Rule proposal, EPA proposed to determine that Kansas significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS and thus proposed to include Kansas in the Transport Rule ozone-season NO<sub>x</sub> program. The analysis conducted for the final Transport Rule, demonstrated that Kansas is linked only to a newly-identified ozone maintenance receptor in Allegan County, Michigan. As noted above, EPA decided to provide an additional opportunity to comment on its conclusions with respect to states that were linked, in the final Transport Rule analysis, only to receptors that were identified for the first time in that analysis. In that supplemental proposal, EPA specifically requested comment in the proposed notice to this supplemental action on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Kansas's significant contribution to nonattainment and interference of the 1997 ozone NAAQS. After a review of comments received, EPA has concluded that Kansas interferes with maintenance of the 1997 ozone NAAQS in Allegan County, Michigan.

This action does not take final action on the portion of the proposal relating to whether to use the Transport Rule ozone season program as the FIP for Kansas. In the 2010 Transport Rule proposal, EPA summarized the status of the CAA section 110(a)(2)(D)(i)(I) SIP for the state of Kansas with regard to the 1997 ozone NAAQS. As explained therein, EPA had previously approved a section 110(a)(2)(D)(i) SIP submission from the state of Kansas for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS on March 9, 2007 (72 FR 10608). That SIP

submission did not rely on the unlawful CAIR trading programs or rely in any way on the conclusion in CAIR that compliance with CAIR was sufficient to satisfy a state's 110(a)(2)(D)(i)(I) obligations with respect to the 1997 ozone and PM<sub>2.5</sub> NAAQS. Kansas is unique in this regard because no other state covered by the Transport Rule or this action has an approved SIP that did not rely on the CAIR requirements, which the DC Circuit held were not sufficient to satisfy the requirements of 110(a)(2)(D)(i)(I) of the Act. For these reasons, EPA does not have an obligation under section 110(c)(1) of the Act to promulgate a FIP for Kansas at this time. Therefore, in a separate action, EPA proposed a SIP Call under CAA section 110(k)(5) for Kansas (76 FR 763, January 6, 2011), and proposed to find the Kansas SIP substantially inadequate to meet the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. This proposal was based on the proposed conclusion that emissions from Kansas are significantly contributing to nonattainment or interfering with maintenance of the 1997 ozone NAAQS in another state. EPA intends to take final action on the proposed SIP Call concurrently with this action or shortly thereafter.

#### *D. Allegan County, Michigan, Receptor*

The final Transport Rule air quality modeling identified a new maintenance receptor in Allegan County, Michigan, to which upwind states interfere with maintenance of the NAAQS.

Some commenters noted that EPA took final action on September 24, 2010 to redesignate the Allegan County, Michigan nonattainment area to attainment for the 1997 8-hour ozone standard. 75 FR 58312; September 24, 2010. Moreover, commenters noted that EPA in the same action approved Michigan's "maintenance plan" for maintaining the 8-hour ozone NAAQS through 2021 in the same area. Based on this observation, these commenters asserted that EPA should not consider Allegan County to be a "maintenance receptor" for purposes of the Transport Rule. Accordingly, these commenters believed that EPA should not be requiring emission reductions from upwind states on the basis of the contributions to Allegan County, Michigan.

EPA agrees that the nonattainment area containing Allegan County, Michigan was redesignated by EPA on September 24, 2010, and that EPA approved the state of Michigan's maintenance plan for the area. The area,

therefore, is currently considered to be a maintenance area and not a nonattainment area.

EPA, however, disagrees with commenters' conclusion that a maintenance area (*i.e.*, an area that has been redesignated and is thus subject to a maintenance plan) should not be considered a maintenance receptor in EPA's analysis for a number of reasons. First, EPA notes that ozone values at the Allegan location, historically and in the future, are strongly influenced by interstate transport. Second, the methodology for identifying "maintenance" receptors relevant to upwind state contributions in the Transport Rule is a unique test designed to satisfy the "interfere with maintenance" prong of 110(a)(2)(D)(i)(I); EPA believes this methodology responds to the U.S. Court of Appeals for the DC Circuit in the July 20, 2008 decision in *North Carolina v. EPA*, 531 F.3d 896, ruling on the deficiency of CAIR with regard to this 110(a)(2)(D)(i) obligation. Finally, as stated in the preamble to the final Transport Rule, EPA's test for identifying "maintenance receptors" for the Transport Rule appropriately differs from, and is not dependent on, recent monitoring data, including data used to re-designate an area as being in attainment.

#### 1. Nature of the Ozone Problem for the Allegan County, Michigan Location

Allegan County is a mostly rural county located in southwestern Michigan along Lake Michigan. EPA source apportionment modeling for 2012 shows that for the ozone monitor in Allegan County, 96 percent of ozone is attributable to out-of-state emissions. As such, Allegan County provides a particularly compelling example of the limited ability of any individual state to unilaterally control air quality outcomes within its borders. See Air Quality Modeling Final Rule TSD, EPA-HQ-OAR-2009-0491-4140 for details.

Table III.D-1 provides more information on the nature of ozone at this site. In many years in the available data set, there are a few days with markedly higher ozone values than are measured for the remainder of the year. Whether those values lead to exceedances of the 8-hour ozone NAAQS is dependent on whether that phenomenon extends to the 4th highest day of the season and on the degree to which this occurs in consecutive years. Accordingly, this site's ozone design value can experience significant variability from year to year.



TABLE III.D-1—RECENT OBSERVED OZONE CONCENTRATIONS AT THE ALLEGAN COUNTY OZONE MONITOR (AIRS ID 260050003)

Year	1st High	2nd High	3rd High	4th High	Design Value (DV) Period	DV (average of 4th high over 3-yr period)
2003	106	102	97	95	.....	.....
2004	107	84	81	79	.....	.....
2005	113	107	95	94	2003–2005	89
2006	99	91	91	91	2004–2006	88
2007	109	108	98	94	2005–2007	93
2008	100	77	74	73	2006–2008	86
2009	92	83	79	76	2007–2009	81
2010	77	76	75	73	2008–2010	74
2011	98	96	96	87	*2009–2011	*78

\*2011 is based on preliminary data for year to date through 9/5/11; see: [http://www.michigan.gov/documents/deq/deq-aqd-mm-ozone-8hrhighestcurrent\\_256060\\_7.pdf](http://www.michigan.gov/documents/deq/deq-aqd-mm-ozone-8hrhighestcurrent_256060_7.pdf).

Table III.D-1 shows that the 1st high annual measured value over the last 9 years has ranged from 92–113 ppb, except in 2010 when the 1st high value was only 77 ppb. The 4th high values have ranged between 73 and 95 ppb. There were three consecutive years with low 4th high values below 80 ppb (2007–2009) and there was one period (2005–2007) with consecutive 4th high values greater than 90 ppb. The fact that the 4th high value dropped from 94 ppb in 2007 to 73 ppb 2008, and then increased again from 73 ppb in 2010 to 87 ppb in 2011 shows that the pattern of regional transport and meteorology are the primary factors in the year to year variability of the observed design value at this site. The magnitude of the year-to-year changes is too large to be caused solely by emission reductions or increases in Allegan County, or even in upwind states. Based on EPA's CAMx source apportionment modeling, if emission reductions were solely responsible for the improvement in ozone concentrations in Allegan County from 2007 to 2008, all of the NO<sub>x</sub> emissions in the upwind states of Illinois, Indiana, and Missouri would have to have dropped by greater than 50 percent between those years. Since that is clearly not the case, the data show that meteorological conditions and regional transport patterns may still effect substantial changes in ozone in Allegan County, which supports its identification as a receptor whose maintenance of the NAAQS may be jeopardized without further emission reductions in upwind states.

## 2. Emission Analysis Conducted in Approving Michigan's Maintenance Plan for Allegan

EPA's rationale for approving the maintenance plan for Allegan County is described in the proposed approval

notice (75 FR 42018; July 20, 2010). A number of tables in that proposed approval compared current emissions to future emissions for VOC and NO<sub>x</sub> sources located within the Allegan County nonattainment area. The analysis concluded that projected emission levels, for sources within the nonattainment area, were decreasing throughout the maintenance period. The ozone redesignation and maintenance plan analysis completed by Michigan meets EPA guidance but uses a different test and data that are less current than what were applied in the Transport Rule. The maintenance plan test for the local SIP requires an analysis to show that emissions in the local area will not increase, thereby showing that the area will be able to maintain the ozone NAAQS. The redesignation is based on having current air quality data which shows that the area is attaining the NAAQS and the area meets all other Clean Air Act requirements for redesignation.

## 3. Maintenance Approach in the Transport Rule

In the *North Carolina* decision concerning CAIR, the Court directed EPA to give independent meaning to the "interfere with maintenance" prong of CAA section 110(a)(2)(D)(i)(I) and to separately identify upwind sources that interfere with downwind maintenance. In particular, the Court expressed concern that CAIR did not adequately protect areas that find themselves barely in attainment by the statutory deadline and suggested that EPA needed to take into account the historic variability of a downwind area's ozone levels in determining whether an upwind source would cause that downwind area to have trouble maintaining the NAAQS.

Accordingly, EPA in the Transport Rule explicitly gave independent

meaning to the "interfere with maintenance" prong of section 110(a)(2)(D)(i)(I) by evaluating contributions to maintenance receptors as well as contributions to identified nonattainment receptors. The maintenance methodology used an approach that examined multiple design value periods (from 2003–2007) projected to 2012. This allowed an estimate of variability in future design values, based on past measured variability. A detailed discussion of EPA's new approach, rationale, and responses to comments on the approach, including the methodology for identifying maintenance receptors, is found in section V.C.2 of the preamble to the final Transport Rule (76 FR 48227).

In the application in the final Transport Rule of that approach, Allegan County was identified as a maintenance receptor but not as a nonattainment receptor. That is, for Allegan County, EPA projected that, under "average" conditions that would take place in the relevant area in the future, Allegan County would not exceed the ozone NAAQS in 2012. On the other hand, EPA projected, under conditions reflecting the maximum design values in the relevant area during 2003–2007, that Allegan County could exceed the ozone NAAQS. EPA's analysis took into account the fact that previously experienced meteorological conditions (e.g., dominant wind direction, temperatures, and air mass patterns) promoting ozone formation may reoccur in the relevant area in the future. Consistently applying this approach throughout the relevant area, EPA found that Allegan County exceeded the threshold for inclusion as a maintenance receptor.



4. Relationship between EPA's "Maintenance Receptor" Analysis for the Transport Rule and EPA's Approval of Michigan's "Maintenance Plan"

EPA's methodology for identifying nonattainment and maintenance receptors is based on modeled projections of measured air quality at specific monitors, not on the designation status of an area.<sup>7</sup> EPA believes this approach is appropriate for the reasons explained in section V.C.2 of the preamble to the final Transport Rule. 76 FR 48230. EPA does not believe it would be appropriate to rely on the designation status of an area to determine air quality or for determining whether one state is contributing significantly to nonattainment or interfering with maintenance of another state under CAA section 110(a)(2)(D)(i)(I). The CAA does not require EPA to do so. As EPA explained in the proposal to designate Allegan County as an attainment area, an area's transport requirements under section 110(a)(2)(D) are not linked to an area's attainment designation and continue to apply regardless of an area's designation status. 75 FR 42018, 42023. The U.S. Court of Appeals for the DC Circuit's decision in *Michigan v. EPA*, 213 F.3d 663 (2000), further supports the position that determinations of significant contribution or interference with maintenance under CAA section 110(a)(2)(D)(i)(I) is most appropriately based on current air quality and modeling, rather than an area's attainment designation. In fact, it would be impractical given the timing of when designations are made and nonattainment SIPs due to base such a determination on an area's attainment or maintenance designation, suggesting that Congress did not intend section 110(a)(2)(D)(i)(I) SIPs to be linked in any way to designation status. Further, even areas that have never been in nonattainment or have been re-designated to attainment (including those where the majority of pollution comes from out of state) continue to be at risk for falling into nonattainment as a result of emissions from upwind states, as the *North Carolina* court recognized, 531 F.3d at 910.

Generally, in judging whether to re-designate a given area, EPA evaluates local emissions as part of the

"maintenance plan." However, if EPA proposes to re-designate areas to attainment, this does not remove the need to address emissions in upwind states which could interfere with the maintenance plan. Without a cap on emissions in upwind states with a significant impact, upwind state emissions might in fact grow, increasing the possibility that the area being evaluated will not be able to maintain attainment. Furthermore, since upwind states are not required to have contingency measures under a downwind state's SIP, it is incumbent on EPA to ensure that states with significant impacts are appropriately controlled.

Additionally, EPA notes that the Transport Rule was based upon newer and more extensive information than was available at the time of our approval of Michigan's "maintenance plan" for Allegan County, and the more recent information suggests Allegan County may have difficulty maintaining attainment, notwithstanding its 2010 redesignation. EPA believes that the maintenance requirements in the Transport Rule serve to reinforce and supplement the state's maintenance plan, providing important support by greatly decreasing the probability that emissions from upwind states could lead to future nonattainment. As discussed above, EPA's projections for 2012 indicate that 96 percent of ozone at the Allegan County receptor is created by precursor emissions originating from states other than Michigan. Clearly, the ability to maintain the ozone NAAQS in Allegan County is largely influenced by upwind state emissions.

5. Recent Air Quality Data

Commenters in Oklahoma noted that EPA should use actual monitoring data, "which reflects CAIR reductions," to demonstrate that Allegan County would remain in attainment. They cited ambient measurements of 74 ppb for the 3-year average for 2008–2010. Recent preliminary air quality data for 2011 serve to reinforce EPA's view that the variability in meteorology is a significant issue for the Allegan receptor's ability to maintain the NAAQS. In 2011, there were four ambient values exceeding the 85 ppb

level of the 1997 NAAQS, with a high value of 98 ppb. In other words, the 4th high value for 2011 exceeded the NAAQS. These values do not yet lead to a conclusion that the area is in nonattainment because the preliminary 2009–2011 design value—the average of the 4th high values for 2009, 2010, and 2011<sup>8</sup>—remains below 85 ppb. However, if the 4th high ambient values for 2012 and 2013 were the same as the preliminary values for 2011, the area would be in violation of the NAAQS. But even with relatively lower ozone concentrations across much of the country in the 2008–2010 period, the preliminary 2011 data show that Allegan County clearly continues to experience high ozone days, suggesting that this location may have maintenance problems that may eventually lead to violations of the 1997 ozone NAAQS. The data illustrate the highly variable nature of ozone at the Allegan location and reinforce the wisdom of taking variability into account in our "maintenance" analysis.

*E. Ozone Season NO<sub>x</sub> Emission Budgets for Five States*

EPA is finalizing state ozone season NO<sub>x</sub> emission budgets for covered units (generally large electric generating units)<sup>9</sup> in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin under the FIPs for the 1997 ozone NAAQS. As noted above, EPA is not taking final action on the proposed Kansas FIP at this time.

EPA is finalizing these budgets, adjusted if necessary based on comments received, as part of the FIPs for these five states. These budgets and the associated variability limits are presented in Table III.E–1. Note that EPA has proposed, in a separate rulemaking (76 FR 63860), to revise the effective date of the assurance penalty provisions so that they start on January 1, 2014 instead of January 1, 2012. If EPA finalizes that revision, the assurance provisions and variability limits below would not apply for 2012 and 2013. The new unit set-asides and Indian country new unit set-aside, if applicable, for these five states are presented in Table III.E–2. For illustrative purposes only, in order to provide a complete picture of the Transport Rule ozone season program,

finalization of the Transport Rule published on July 6, 2011 and finalization of this supplemental action. In a separate action, EPA has proposed revisions to certain state budgets and new unit set-asides that are not reflected in these tables, as they are not yet finalized. That action may be reviewed at 76 FR 63860, October 14, 2011.

<sup>7</sup> This issue was discussed in the preamble to the NO<sub>x</sub> SIP Call (see 63 FR 57375, October 27, 1998, footnote 25), and the U.S. Court of Appeals for the DC Circuit's decision in *Michigan v. EPA*, 213 F.3d 663 (2000), further supports the position that determinations of significant contribution or interference with maintenance under CAA section 110(a)(2)(D)(i)(I) should not be based on an area's attainment designation.

<sup>8</sup> Data for 2011 is incomplete at the time of finalization of this rulemaking.

<sup>9</sup> The applicability provisions for determining covered units in the named six states for the Transport Rule ozone season NO<sub>x</sub> program are the same as those described in section VII.B, "Applicability," of the preamble to the final Transport Rule.

<sup>10</sup> This table reflects ozone-season NO<sub>x</sub> budgets and variability limits as currently effective based on

Tables III.E-1 and III.E-2 also include information concerning the other states in that program. However, the proposed

rule did not reconsider or request comment on any issues concerning the other states, and neither the proposed

rule nor this final rule reopens any issues concerning these other states.

TABLE III.E-1—STATE BUDGETS <sup>10</sup> AND VARIABILITY LIMITS FOR 2012–2013, 2014 AND THEREAFTER

State	NO <sub>x</sub> Ozone Season trading budget for 2012 and 2013 (tons) *	NO <sub>x</sub> Ozone Season trading budget for 2014 and thereafter (tons) *	Variability limits for 2012 and 2013	Variability limits for 2014 and thereafter
Alabama .....	31,746	31,499	6,667	6,615
Arkansas .....	15,037	15,037	3,158	3,158
Florida .....	27,825	27,825	5,843	5,843
Georgia .....	27,944	18,279	5,868	3,839
Illinois .....	21,208	21,208	4,454	4,454
Indiana .....	46,876	46,175	9,844	9,697
Iowa .....	16,532	16,207	3,472	3,403
Kentucky .....	36,167	32,674	7,595	6,862
Louisiana .....	13,432	13,432	2,821	2,821
Maryland .....	7,179	7,179	1,508	1,508
Michigan .....	28,041	27,016	5,889	5,673
Mississippi .....	10,160	10,160	2,134	2,134
Missouri .....	22,762	21,073	4,780	4,425
New Jersey .....	3,382	3,382	710	710
New York .....	8,331	8,331	1,750	1,750
North Carolina .....	22,168	18,455	4,655	3,876
Ohio .....	40,063	37,792	8,413	7,936
Oklahoma ** .....	36,567	21,835	7,679	4,585
Pennsylvania .....	52,201	51,912	10,962	10,902
South Carolina .....	13,909	13,909	2,921	2,921
Tennessee .....	14,908	8,016	3,131	1,683
Texas .....	63,043	63,043	13,239	13,239
Virginia .....	14,452	14,452	3,035	3,035
West Virginia .....	25,283	23,291	5,309	4,891
Wisconsin .....	14,784	14,296	3,105	3,002

\* Variability limits are discussed in the preamble to the final Transport Rule, section VI.E.

\*\* Data in this table is presented for Oklahoma separately for the years 2012 and 2013, as its state budget and variability limits are not the same in each of those years.

In section III.B.iv, EPA explained that this final rule adjusts the Oklahoma state budget only for the 2012 ozone season, reflecting revised emission projections that do not include LNB installation or the redispensing of oil/gas steam units by the 2012 ozone season. For 2013 onwards, the Oklahoma ozone season budget remains at the level EPA proposed.

In the October 6, 2011 proposed Revisions to the Transport Rule (also known as the Cross-State Air Pollution Rule), EPA proposed, and invited comment on, adjustments to the annual NO<sub>x</sub> emission budgets for both Michigan and Wisconsin. For both states, the budget was proposed to be increased based on revised assumptions regarding Selective Catalytic Reduction (SCR) technology previously assumed to

be installed and operating at specific units in 2012. In the case of Michigan, the budget was proposed to be increased to account for Monroe Unit 2 not having a SCR in 2012 or 2014. For Wisconsin, a similar adjustment was proposed to account for JP Madgett Unit 1 not having a SCR in 2012 or 2014. EPA recognized that these revised input assumptions would also affect the calculation of the states' ozone-season budgets, and EPA is now applying that information to the determination of these states' ozone season NO<sub>x</sub> budgets in this final rule. Applying the updated information regarding Monroe Unit 2 in Michigan and JP Madgett Unit 1 in Wisconsin results in budgets for Michigan and Wisconsin that are 2,289 tons and 1,080 tons, respectively, larger than the proposed budgets for these states. The final budgets are reflected in Table III.E-1.

As noted above, EPA is finalizing for the five states the ozone season new unit set-asides for allowance allocations to new units, determined in the same manner as for the other states covered in the Transport Rule ozone season NO<sub>x</sub>

program. This approach is described in section VII.D.2, "Allocations to New Units," of the preamble to the final Transport Rule. Table III.E-2 shows the new unit set-aside for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin as a percent of state ozone season NO<sub>x</sub> emissions. Table III.E-3 shows the new unit set-aside and Indian country new unit set-aside, as appropriate, for the five states and, for the reasons discussed above, the other states in the Transport Rule ozone season program.

In addition, as described in section VII.D.2, "Allocations to New Units," of the preamble to the final Transport Rule, EPA is providing a mechanism to make allowances available in the future for new units built in Indian country. Table III.E-3 shows the Indian country set-asides EPA is finalizing to set aside Transport Rule ozone-season allowances from the budgets of the states addressed in this final rule that have Indian country within their borders (*i.e.*, Iowa, Michigan, Missouri, and Wisconsin). As explained in the final Transport Rule,

<sup>10</sup> This table reflects ozone-season NO<sub>x</sub> budgets and variability limits as currently effective based on finalization of the Transport Rule published on July 6, 2011 and finalization of this supplemental action. In a separate action, EPA has proposed revisions to certain state budgets and new unit set-asides that are not reflected in these tables, as they are not yet finalized. That action may be reviewed at 76 FR 63860, October 14, 2011.

EPA will administer these Indian country new unit set-asides regardless of whether a state replaces its Transport Rule FIP with an approved SIP. EPA received one comment from a state regarding the size of its Indian Country new unit set-aside. However, there was no information submitted showing that EPA's calculations or methodologies were in error. Therefore, EPA is finalizing the new unit set-asides and Indian country new unit set-asides, as proposed, with adjustments to reflect any revisions to the appropriate

budgets, for the five states in this final action.

TABLE III.E-2—STATE NEW UNIT SET-ASIDES AS A PERCENT OF STATE NO<sub>x</sub> OZONE SEASON TRADING BUDGETS

	NO <sub>x</sub> ozone season new unit set-aside (percent)
Iowa .....	2

TABLE III.E-2—STATE NEW UNIT SET-ASIDES AS A PERCENT OF STATE NO<sub>x</sub> OZONE SEASON TRADING BUDGETS—Continued

	NO <sub>x</sub> ozone season new unit set-aside (percent)
Michigan .....	2
Missouri .....	3
Oklahoma .....	2
Wisconsin .....	6

TABLE III.E-3—NEW UNIT SET-ASIDES AND INDIAN COUNTRY NEW UNIT SET-ASIDES FOR 2012–2013; 2014 AND THEREAFTER <sup>11</sup>

State	New unit set-aside for 2012 and 2013 (tons)	New unit set-aside for 2014 and thereafter (tons)	Indian country new unit set-aside for 2012 and 2013 (tons)	Indian country new unit set-aside for 2014 and thereafter (tons)
Alabama .....	635	630	.....	.....
Arkansas .....	301	301	.....	.....
Florida .....	529	529	28	28
Georgia .....	559	366	.....	.....
Illinois .....	1,697	1,697	.....	.....
Indiana .....	1,406	1,385	.....	.....
Iowa .....	314	308	17	16
Kentucky .....	1,447	1,307	.....	.....
Louisiana .....	390	390	13	13
Maryland .....	144	144	.....	.....
Michigan .....	533	513	28	27
Mississippi .....	193	193	10	10
Missouri .....	683	632	.....	.....
New Jersey .....	68	68	.....	.....
New York .....	242	242	8	8
North Carolina .....	1,308	1,089	22	18
Ohio .....	801	756	.....	.....
Oklahoma .....	731	437	.....	.....
Pennsylvania .....	1,044	1,038	.....	.....
South Carolina .....	264	264	14	14
Tennessee .....	298	160	.....	.....
Texas .....	1,828	1,828	63	63
Virginia .....	723	723	.....	.....
West Virginia .....	1,264	1,165	.....	.....
Wisconsin .....	872	844	15	14

Finally, EPA is finalizing the unit-level allocations of Transport Rule NO<sub>x</sub> ozone season allowances under the FIP to existing covered units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin. These allocations are presented in the TSD entitled “Final Unit-Level Ozone Season NO<sub>x</sub> Allowance Allocations to Existing Units in Five States: Supplemental Final Rule TSD,” which is available in the public docket for this rule and on the Web at

<http://www.epa.gov/crossstaterule>. The methodology and procedures used for allocations to existing units covered by the Transport Rule ozone season NO<sub>x</sub> program are specified in section VII.D, “Allocation of Emission Allowances,” of the preamble to the final Transport Rule and in the TSD entitled “Allowance Allocation Final Rule TSD,” which is available in the public docket for this rule. The TSD entitled “Final Unit-Level Ozone Season NO<sub>x</sub> Allowance Allocations to Existing Units in Five States: Supplemental Final Rule TSD” also describes how to access publicly available downloadable Excel spreadsheets with the unit-level allowance allocations and the supporting data EPA used in applying the final Transport Rule existing unit allocation methodology to eligible units

in each of the five states in this final rule on the Web at <http://www.epa.gov/crossstaterule>.

*F. Implementation of the Transport Rule NO<sub>x</sub> Ozone Season Trading Program*

As discussed above, EPA concludes in this final rule that the Transport Rule NO<sub>x</sub> Ozone Season Trading Program set forth in the final Transport Rule should be used as the FIP for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin with regard to the 1997 ozone NAAQS. In the SNPR, EPA proposed that the implementation of the Transport Rule ozone season program be identical for these five states to implementation for the other states subject to this program. Under this final rule, the implementation of this program for these five states is the same as for the

<sup>11</sup> This table reflects ozone-season NO<sub>x</sub> budgets and variability limits as currently effective based on finalization of the Transport Rule published on July 6, 2011 and finalization of this supplemental action. In a separate action, EPA has proposed revisions to certain state budgets and new unit set-asides that are not reflected in these tables, as they are not yet finalized. That action may be reviewed at 76 FR 63860, October 14, 2011.

other states, except for the deadlines for submission of allocations for existing units for 2013.

Under the Transport Rule, states have the option of submitting three types of SIP revisions that, if approved, change certain provisions of the Transport Rule NO<sub>x</sub> Ozone Season Trading Program. First, a state may submit a SIP revision setting forth allocations to existing units for 2013. Second, a state may submit an abbreviated SIP that replaces the allowance allocation provisions in the FIP to existing and new units starting in 2014 or any year thereafter. Third, a state may submit a full SIP that replaces the FIP entirely (except for any provisions concerning units in any Indian country within the borders of the state) but substantively changes only the allowance allocation provisions starting in 2014 or any year thereafter.

With regard to the first type of SIP revision, involving only 2013 allocations to existing units, the final Transport Rule set a series of deadlines concerning submission, approval, and implementation of state-determined 2013 existing-unit allocations. Specifically, states under the final Transport Rule were required to inform EPA of their intent to submit 2013 allocations for existing units by November 7, 2011 and must submit these allocations by April 1, 2012, and the Administrator will record the allocations, if approved, by October 1, 2012. Because this series of sequential deadlines began about six months before the issuance and the publication of this final rule, EPA is revising the final Transport Rule (including the Transport Rule NO<sub>x</sub> Ozone Season Trading Program) to establish an analogous series—only for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin—of deadlines for 2013 allocations of Transport Rule NO<sub>x</sub> Ozone Season allowances using dates that are about six months later than the dates in the generally applicable series of 2013 allocation-related deadlines. For example, the five states must inform EPA of their intent to submit 2013 allocations for existing units by the date 70 days after publication of this final rule in the **Federal Register** and must submit these allocations by October 1, 2012, and the Administrator will record the allocations, if approved, by April 15, 2013.<sup>12</sup>

<sup>12</sup> Similarly, the deadline for recordation by the Administrator of 2012 existing-unit allocations and, in the absence of a notice by a state of intent to submit a SIP revision with 2013 allocations, of 2013 existing-unit allocations is moved for the five states to the date 90 days after publication of this final rule in the **Federal Register**. The analogous deadline for the other states in the Transport Rule

With regard to the other two types of SIP revisions (abbreviated SIPs and full SIPs), all of the deadlines for SIP submission and for submission of allocations (or results of auctions, if any) for the other states in the Transport Rule ozone season program are about 11 months or more after the issuance or the publication of the final Transport Rule, and no commenters suggested changing these deadlines for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin. Consequently, EPA is finalizing these deadlines related to abbreviated SIPs and full SIPs. The submission deadlines and process for abbreviated SIPs and full SIPs for all states (including the five states covered by this final rule) in the Transport Rule ozone season program are found in section X, “Transport Rule State Implementation Plans,” of the preamble to the final Transport Rule.

Finally, under the final Transport Rule, the first Transport Rule ozone season trading program runs from May 1, 2012 through September 30, 2012. For the reasons discussed above, the FIPs for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin apply the Transport Rule ozone-season NO<sub>x</sub> requirements to sources in those states in the same manner the requirements are applied to sources in other states covered by Transport Rule ozone-season provisions.

#### IV. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action. This action has also been determined to be economically significant. EPA’s regulatory impacts analysis (RIA) of the July 2011 final Transport Rule included modeling of ozone-season NO<sub>x</sub> reductions for the states covered in this final rulemaking. While the results of that analysis cannot be disaggregated to isolate the impacts of this rulemaking alone, that analysis does include a comprehensive and fully detailed accounting of the costs and

ozone season program was November 7, 2011, which was set as the date 90 days after publication of the final Transport Rule and precedes the issuance and publication of this final rule.

benefits of the Transport Rule programs, inclusive of the impacts of this rulemaking.<sup>13</sup>

##### B. Paperwork Reduction Act

EPA is required to document the information collection burden imposed by the Transport Rule program on industry, States, and EPA in an information collection request (ICR). The ICR describes the information collection requirements associated with the final Transport Rule program inclusive of this proposal and estimates the incremental costs of compliance with all such requirements, such as the requirement for industry to monitor, record, and report emissions data to EPA.

The ICR for the Transport Rule Program inclusive of this supplemental rule was submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and was approved under OMB control number 2060–0667. EPA believes that there are no information collection requirements or burden beyond those reported in the Transport Rule program inclusive of this supplemental rule.

##### C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as:

(1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201. For the electric power generation industry, the small business size standard is an ultimate parent entity defined as having a total electric output of 4 million megawatt-hours (MW-hour) or less in the previous fiscal year.

(2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) A small organization that is any not-for-profit enterprise which is

<sup>13</sup> For more information, please see the final Transport Rule Regulatory Impact Analysis in the docket for this rulemaking (EPA–HQ–OAR–2009–0491–4409).

independently owned and operated and is not dominant in its field.

TABLE IV.C-1—POTENTIALLY REGULATED CATEGORIES AND ENTITIES <sup>a</sup>

Category	NAICS Code <sup>b</sup>	Examples of potentially regulated entities
Industry .....	221112	Fossil-fuel-fired electric utility steam generating units.
Federal Government .....	<sup>c</sup> 221112	Fossil-fuel-fired electric utility steam generating units owned by the federal government.
State/Local Government .....	<sup>c</sup> 221112	Fossil-fuel-fired electric utility steam generating units owned by municipalities.
Tribal Government .....	921150	Fossil-fuel-fired electric utility steam generating units in Indian Country.

<sup>a</sup> Include NAICS categories for source categories that own and operate electric generating units only.

<sup>b</sup> North American Industry Classification System.

<sup>c</sup> Federal, state, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

After considering the economic impacts of the Transport Rule program inclusive of this supplemental rule on small entities, as described in section XII.C of the preamble to the final Transport Rule, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities (No SISNOSE). This certification is based on the economic impact of the final Transport Rule inclusive of this supplemental rule on all affected small entities across all industries affected. EPA assessed the potential impact of the final Transport Rule on small entities and found that there are about 660 potentially affected small units (*i.e.*, greater than 25 MW and generating less than 4MM MWh) out of 3,625 existing units in the TR region. The majority of these EGUs are owned by entities that do not meet the small entity definition. The remaining 271 of the 660 EGUs are owned by 108 potentially affected small entities and are likely to be affected by this rule. EPA estimates that 24 of the 108 identified small entities will have annualized costs greater than 1 percent of their revenues, and the other 84 are projected to incur costs less than 1 percent of revenues. Eleven small entities out of 108—only about 10 percent—are estimated to have annualized costs greater than 3 percent of their revenues, which factors into EPA’s finding of no SISNOSE. EPA believes that the provisions of the Regulatory Flexibility Act are covered by and reported in section XII.C of the preamble to the final Transport Rule.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In EPA’s modeling, most of the cost impacts for these small entities and their associated units are driven by lower electricity generation relative to the base case. Another main driver of

small entity impacts are higher fuel costs, which the affected units would incur irrespective of whether they had to comply with this rule. In addition, EPA’s decision to exclude units smaller than 25 MWe has already significantly reduced the burden on hundreds of small entities. Hence, EPA has concluded that there is no SISNOSE for this rule.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. The Transport Rule program inclusive of this supplemental rule contains a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement that is summarized in section XII.D of the preamble to the final Transport Rule.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA held consultations with the governmental entities affected by the final Transport Rule and this supplemental rule. As detailed in section XII.D of the preamble to the final Transport Rule, EPA participated in informational calls with the Environmental Council of the States (ECOS) and the National Governors Association to provide information about the January 7, 2011 NODA <sup>14</sup> directly to state and local officials and conducted consultations with federally recognized tribes prior to finalizing the final Transport Rule and issuing the supplemental notice of proposed rulemaking for the action being

finalized here for inclusion of six additional states (of which only three being finalized today—Iowa, Michigan, and Wisconsin—have Indian country within their boundaries).

EPA believes that no unfunded mandates have been created by the Transport Rule program inclusive of this action. Neither the final Transport Rule nor the provisions in this SNPR have regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

As described in section XII.E of the preamble to the final Transport Rule, EPA has concluded that the Transport Rule program inclusive of this supplemental rule does not have federalism implications. Thus, Executive Order 13132 does not apply to the final Transport Rule or to this SNPR.

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

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. EPA has concluded that this action may have tribal implications. As described in section XII.F of the preamble to the final Transport Rule, EPA believes that there has been proper consultation and coordination with Indian tribal governments for the Transport Rule program inclusive of this supplemental rule.

<sup>14</sup> 76 FR 1109 (January 7, 2011).

As required by section 7(a) of the Executive Order, EPA's Tribal Consultation Official has certified that the requirements of the Executive Order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for the final Transport Rule.

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

Executive Order 13045 (62 FR 19,885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of this planned rule on children, and explain why this planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

As described in section XII.G of the preamble to the final Transport Rule, the Transport Rule program inclusive of this supplemental rule is not subject to Executive Order 13045 because it does not involve decisions that increase environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in the Transport Rule program inclusive of this action will further improve air quality and will further improve children's health.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy action" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of

the Office of Information and Regulatory Affairs as a significant energy action." This rule is a significant regulatory action under Executive Order 12866, and this rule is likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA prepared a Statement of Energy Effects for the Transport Rule program inclusive of this supplemental rule which appears in section XII.H of the preamble to the final Transport Rule.

EPA believes that there is no impact to the energy supply beyond that which is reported for the Transport Rule program inclusive of this supplemental rule in the final Transport Rule.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. As described in section XII.I of the preamble to the final Transport Rule, the Transport Rule program inclusive of this supplemental rule will require all sources to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority, low-income, and Tribal populations in the United States. During development of this Transport Rule program inclusive of this supplemental rule, EPA considered its impacts on low-income, minority,

and Tribal communities in several ways and provided multiple opportunities for these communities to meaningfully participate in the rulemaking process. As described in section XII.J of the preamble to the final Transport Rule, EPA believes that the final remedy in the Transport Rule program inclusive of this supplemental rule addresses potential environmental justice concerns about localized hot spots and reduces ambient concentrations of pollution where they are most needed by sensitive and vulnerable populations.

EPA believes that the vast majority of communities and individuals in areas covered by the Transport Rule program inclusive of this action, including numerous low-income, minority, and Tribal individuals and communities in both rural areas and inner cities in the eastern and central U.S., will see significant improvements in air quality and resulting improvements in health. EPA's assessment of the effects of the final Transport Rule program inclusive of this supplemental rule on these communities is detailed in section XII.J of the preamble to the final Transport Rule. Based on this assessment, EPA concludes that we do not expect disproportionately high and adverse human health or environmental effects on minority, low-income, or Tribal populations in the United States as a result of implementing the Transport Rule program inclusive of this action.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 27, 2012.

*L. Judicial Review*

Petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by February 27, 2012. Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final

actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

Any final action related to the Transport Rule is “nationally applicable” within the meaning of section 307(b)(1). Through this rule, EPA interprets section 110 of the CAA, a provision which has nationwide applicability. In addition, the Transport Rule applies to 27 States. The Transport Rule is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different states subject to it. For these reasons, the Administrator also is determining that any final action regarding the Transport Rule is of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b) any petitions for review of final actions regarding the Transport Rule must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

Filing a petition for reconsideration of this action does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. In addition, pursuant to CAA section 307(b)(2) this action may not be challenged later in proceedings to enforce its requirements.

**List of Subjects**

*40 CFR Part 52*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 97*

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

Dated: December 15, 2011.

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

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

**PART 52—[AMENDED]**

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

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

**Subpart A—General Provisions**

**§ 52.38 [Amended]**

- 2. Section 52.38 is amended by:
  - a. In paragraph (b)(2), add, after the word “Indiana”, the word “Iowa”, add, after the word “Maryland”, the word “Michigan”, add after the word “Mississippi”, the word “Missouri”, add after the word “Ohio”, the word “Oklahoma”, and remove the words “and West Virginia” and add, in their place, the words “West Virginia, and Wisconsin”;
  - b. In paragraph (b)(3)(v)(A), add, after the words “October 17, 2011”, the words “or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 6, 2012” and add, after the words “April 1, 2012”, the words “or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2012”; and
  - c. In paragraph (b)(3)(v)(B), add, after the words “April 1, 2012”, the words “or, for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2012”.

**Subpart Q—Iowa**

■ 3. Section 52.840 is amended by adding a new paragraph (b) to read as follows:

**§ 52.840 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b)(1) The owner and operator of each source and each unit located in the State of Iowa and Indian country within the borders of the State and for which requirements are set forth under the TR NO<sub>x</sub> Ozone Season Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Iowa’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the TR Federal Implementation Plan under § 52.38(b),

except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Iowa’s SIP.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, if, at the time of the approval of Iowa’s SIP revision described in paragraph (b)(1) of this section, the Administrator has already started recording any allocations of TR NO<sub>x</sub> Ozone Season allowances under subpart BBBBB of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO<sub>x</sub> Ozone Season allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

**Subpart X—Michigan**

■ 4. Section 52.1186 is amended by adding a new paragraph (e) to read as follows:

**§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(e)(1) The owner and operator of each source and each unit located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth under the TR NO<sub>x</sub> Ozone Season Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the TR Federal Implementation Plan under § 52.38(b), except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan’s SIP.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, if, at the time of the approval of Michigan’s SIP revision described in paragraph (e)(1) of this section, the Administrator has



already started recording any allocations of TR NO<sub>x</sub> Ozone Season allowances under subpart BBBBB of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO<sub>x</sub> Ozone Season allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

#### Subpart AA—Missouri

■ 5. Section 52.1326 is amended by adding a new paragraph (b) to read as follows:

**§ 52.1326 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(b)(1) The owner and operator of each source and each unit located in the State of Missouri and for which requirements are set forth under the TR NO<sub>x</sub> Ozone Season Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Missouri's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the TR Federal Implementation Plan under § 52.38(b), except to the extent the Administrator's approval is partial or conditional.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, if, at the time of the approval of Missouri's SIP revision described in paragraph (b)(1) of this section, the Administrator has already started recording any allocations of TR NO<sub>x</sub> Ozone Season allowances under subpart BBBBB of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO<sub>x</sub> Ozone Season allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

#### Subpart LL—Oklahoma

■ 6. Section 52.1930 is added to read as follows:

**§ 52.1930 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

(a) The owner and operator of each source and each unit located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth under the TR NO<sub>x</sub> Ozone Season Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the TR Federal Implementation Plan under § 52.38(b), except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma's SIP.

(b) Notwithstanding the provisions of paragraph (a) of this section, if, at the time of the approval of Oklahoma's SIP revision described in paragraph (a) of this section, the Administrator has already started recording any allocations of TR NO<sub>x</sub> Ozone Season allowances under subpart BBBBB of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO<sub>x</sub> Ozone Season allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

#### Subpart YY—Wisconsin

■ 7. Section 52.2587 is amended by adding a new paragraph (e) to read as follows:

**§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

\* \* \* \* \*

(e)(1) The owner and operator of each source and each unit located in the State of Wisconsin and Indian country within the borders of the State and for which

requirements are set forth under the TR NO<sub>x</sub> Ozone Season Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the TR Federal Implementation Plan under § 52.38(b), except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's SIP.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, if, at the time of the approval of Wisconsin's SIP revision described in paragraph (e)(1) of this section, the Administrator has already started recording any allocations of TR NO<sub>x</sub> Ozone Season allowances under subpart BBBBB of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO<sub>x</sub> Ozone Season allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

#### PART 97—[AMENDED]

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

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

■ 9. Section 97.510 is revised to read as follows:

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

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

State	NO <sub>x</sub> Ozone Season trading budget (tons)* for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama	31,746	635	
Arkansas	15,037	301	
Florida	27,825	529	28
Georgia	27,944	559	
Illinois	21,208	1,697	
Indiana	46,876	1,406	
Iowa	16,532	314	17
Kentucky	36,167	1,447	
Louisiana	13,432	390	13
Maryland	7,179	144	
Michigan	28,041	533	28
Mississippi	10,160	193	10
Missouri	22,762	683	
New Jersey	3,382	68	
New York	8,331	242	8
North Carolina	22,168	1,308	22
Ohio	40,063	801	
Oklahoma	36,567	731	
	21,835	437	
Pennsylvania	52,201	1,044	
South Carolina	13,909	264	14
Tennessee	14,908	298	
Texas	63,043	1,828	63
Virginia	14,452	723	
West Virginia	25,283	1,264	
Wisconsin	14,784	872	15

State	NO <sub>x</sub> Ozone Season trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama	31,499	630	
Arkansas	15,037	301	
Florida	27,825	529	28
Georgia	18,279	366	
Illinois	21,208	1,697	
Indiana	46,175	1,385	
Iowa	16,207	308	16
Kentucky	32,674	1,307	
Louisiana	13,432	390	13
Maryland	7,179	144	
Michigan	27,016	513	27
Mississippi	10,160	193	10
Missouri	21,073	632	
New Jersey	3,382	68	
New York	8,331	242	8
North Carolina	18,455	1,089	18
Ohio	37,792	756	
Oklahoma	21,835	437	
Pennsylvania	51,912	1,038	
South Carolina	13,909	264	14
Tennessee	8,016	160	
Texas	63,043	1,828	63
Virginia	14,452	723	
West Virginia	23,291	1,165	
Wisconsin	14,296	844	14

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

(b) The States' variability limits for the State NO<sub>x</sub> Ozone Season trading budgets for the control periods in 2012 and thereafter are as follows:

State	Variability limits for 2012 and 2013	Variability limits for 2014 and thereafter
Alabama	6,667	6,615
Arkansas	3,158	3,158
Florida	5,843	5,843
Georgia	5,868	3,839
Illinois	4,454	4,454
Indiana	9,844	9,697
Iowa	3,472	3,403
Kentucky	7,595	6,862
Louisiana	2,821	2,821
Maryland	1,508	1,508
Michigan	5,889	5,673
Mississippi	2,134	2,134
Missouri	4,780	4,425
New Jersey	710	710
New York	1,750	1,750
North Carolina	4,655	3,876
Ohio	8,413	7,936
Oklahoma	7,679	4,585
Pennsylvania	10,962	10,902
South Carolina	2,921	2,921
Tennessee	3,131	1,683
Texas	13,239	13,239
Virginia	3,035	3,035
West Virginia	5,309	4,891
Wisconsin	3,105	3,002

#### § 97.521 [Amended]

- 10. Section 97.521 is amended by:
- a. In paragraph (a) add, after the words “November 7, 2011”, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 26, 2012”;
- b. In paragraph (b) introductory text, add, after the words “November 7, 2011”, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 26, 2012”, add, after the words “October 17, 2011”, the words “or, with regard to TR NO<sub>x</sub> Ozone Season units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 6, 2012”, and add, after the words “April 1, 2012”, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2012”;
- c. In paragraph (b)(1), add, after the words “April 1, 2012”, the words “or, with regard to TR NO<sub>x</sub> Ozone Season units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, by October 1, 2012”, and add, after the words “April 15, 2012”, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 15, 2012”;
- d. In paragraph (b)(2), add, after the words “April 1, 2012”, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2012”, and add, after the words “by October 1, 2012” whenever they appear, the words “or, with regard

to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, April 1, 2013”; and

■ e. In paragraph (b)(3), add, after the words “April 1, 2012”, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2012”, and add, after the words “by October 1, 2012” whenever they appear, the words “or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, April 1, 2013”.

[FR Doc. 2011–32821 Filed 12–23–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA–R04–OAR–2011–0006(a); FRL–9611–8]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Florida; Control of Hospital/Medical/Infectious Waste Incinerator (HMIWI) Emissions From Existing Facilities

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the Clean Air Act (CAA) section 111(d)/129 state plan (the Plan) submitted by the Florida Department of Environmental Protection

(FDEP) for the State of Florida on December 21, 2010, for implementing and enforcing the Emissions Guidelines (EGs) applicable to existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs). These EGs apply to devices that combust any amount of hospital waste and/or medical/infectious waste.

**DATES:** This direct final rule is effective February 27, 2012 without further notice, unless EPA receives adverse comment by January 26, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R04–OAR–2011–0006 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: [garver.daniel@epa.gov](mailto:garver.daniel@epa.gov).

3. *Fax*: (404) 562–9095.

4. *Mail*: EPA–R04–OAR–2011–0006,

Daniel Garver, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303.

5. *Hand Delivery or Courier*: Mr. Daniel Garver, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such