**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52, 78, and 97**

**[EPA–HQ–OAR–2020–0272; FRL–10013–42–OAR]**

**RIN 2060–AU84**

## Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed action is taken in response to the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) remand of the Cross-State Air Pollution Rule (CSAPR) Update in *Wisconsin* v. *EPA* on September 13, 2019. The CSAPR Update finalized Federal Implementation Plans (FIPs) for 22 states to address their interstate pollution-transport obligations under the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The D.C. Circuit found that the CSAPR Update, which was published on October 26, 2016, as a partial remedy to address upwind states' obligations prior to the 2018 Moderate area attainment date under the 2008 ozone NAAQS, was unlawful to the extent it allowed those states to continue their significant contributions to downwind ozone problems beyond the statutory dates by which downwind states must demonstrate their attainment of the air quality standards. On the same grounds, the D.C. Circuit also vacated the CSAPR Close-Out in *New York* v. *EPA* on October 1, 2019. This proposed rule, if finalized, will resolve 21 states' outstanding interstate ozone transport obligations with respect to the 2008 ozone NAAQS. The U.S. Environmental Protection Agency (EPA) is taking this action under the Clean Air Act section known as the ''good neighbor provision.''

This action proposes to find that for 9 of the 21 states for which the CSAPR Update was found to be only a partial remedy (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), their projected nitrogen oxides ($NO_X$) emissions in the 2021 ozone season and thereafter do not significantly contribute to a continuing downwind nonattainment and/or maintenance problem, and therefore the states' CSAPR Update FIPs (or the SIPs subsequently approved to replace certain states' CSAPR Update FIPs) fully address their interstate ozone transport obligations with respect to the 2008 ozone NAAQS. This action also proposes to find that for the 12 remaining states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia), their projected 2021 ozone season $NO_X$ emissions significantly contribute to downwind states' nonattainment and/or maintenance problems for the 2008 ozone NAAQS. EPA proposes to issue new or amended FIPs for these 12 states to replace their existing CSAPR $NO_X$ Ozone Season Group 2 emissions budgets for electricity generating units (EGUs) with revised budgets via a new CSAPR $NO_X$ Ozone Season Group 3 Trading Program. EPA is proposing to require implementation of the revised emission budgets beginning with the 2021 ozone season (which runs annually from May 1–September 30). Based on EPA's assessment of remaining air quality issues and additional emission control strategies for EGUs and other emissions sources in other industry sectors (non-EGUs), EPA further proposes that the proposed $NO_X$ emission reductions fully eliminate these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS. EPA also proposes in this action an error correction for its June 2018 approval of Kentucky's good neighbor SIP.

**DATES:** Comments must be received on or before December 14, 2020.

*Public Hearing:* EPA will hold a virtual public hearing on November 12, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0272, via the Federal eRulemaking Portal: *https://www.regulations.gov/*. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/*, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets*.

Throughout this proposal, EPA is soliciting comment on numerous aspects of the proposed rule. EPA has indexed each comment solicitation with an alpha-numeric identifier (*e.g.,* ''C–1'', ''C–2'', ''C–3'', . . .). Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that commenters include the identifier in either a heading, or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. We emphasize that we are not limiting comment to these identified areas and welcome comments on any matters that are within scope of this action.

EPA will announce further details on the virtual public hearing, as well as registration information, at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update*. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Hooper, Clean Air Markets Division, Office of Atmospheric Programs (Mail Code 6204M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9167; email address: *Hooper.Daniel@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Preamble Glossary of Terms and Abbreviations

The following are abbreviations of terms used in the preamble.

4-Step Good Neighbor Framework 4-Step Framework
AEO Annual Energy Outlook
AQAT Air Quality Assessment Tool
AQM TSD Air Quality Modeling Technical Support Document
CAA or Act Clean Air Act
CAIR Clean Air Interstate Rule
CAMx Comprehensive Air Quality Model with Extensions
CBI Confidential Business Information
CEMS Continuous Emission Monitoring Systems
CFR Code of Federal Regulations
CMDb Control Measures Database

CMV Commercial Marine Vehicle
CoST Control Strategy Tool
CRA Congressional Review Act
CSAPR Cross-State Air Pollution Rule
EGU Electric Generating Unit
EISA Energy Independence and Security Act
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GWh Gigawatt-hour
IC Internal Combustion
ICI Industrial, Commercial, and Institutional
ICR Information Collection Request
IPM Integrated Planning Model
iSIP Infrastructure State Implementation Plan
km Kilometer
lb/mmBtu Pounds per Million British Thermal Units
LEC Low Emission Combustion
LNB Low-$NO_X$ Burners
MJO Multi-Jurisdictional Organizations
mmBtu Million British Thermal Units
MOVES Motor Vehicle Emission Simulator
MSAT2 Mobile Source Air Toxic Rule
NAAQS National Ambient Air Quality Standard
NEI National Emission Inventory
NESHAP National Emission Standards for Hazardous Air Pollutants
$NO_X$ Nitrogen Oxides
NODA Notice of Data Availability
Non-EGU Non-electric Generating Unit
NSPS New Source Performance Standard
NUSA New Unit Set-Aside
OSAT/APCA Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis
OMB Office of Management and Budget
OTR Ozone Transport Region
PEMS Predictive Emissions Monitoring System
$PM_{2.5}$ Fine Particulate Matter
ppb Parts Per Billion
RACT Reasonably Available Control Technology
RIA Regulatory Impact Analysis
RICE Reciprocating Internal Combustion Engines
RRF Relative Response Factor
SCR Selective Catalytic Reduction
SIP State Implementation Plan
SMOKE Sparse Matrix Operator Kernel Emissions
SNCR Selective Non-catalytic Reduction
$SO_2$ Sulfur Dioxide
TIP Tribal Implementation Plan
TSD Technical Support Document
tpy Ton Per Year
ULNB Ultra-low $NO_X$ Burner
VOC Volatile Organic Compound
WRF Weather Research and Forecasting Model

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## I. Executive Summary

The 2008 ozone National Ambient Air Quality Standards (NAAQS) is an 8-hour standard that was set at 75 parts

per billion (ppb).[1] The U.S. Environmental Protection Agency (EPA) published the Cross-State Air Pollution Rule (CSAPR) Update on October 26, 2016, which partially addressed the interstate transport of emissions from 21 states with respect to the 2008 ozone NAAQS.[2] 81 FR 74504. On December 21, 2018, EPA published the CSAPR Close-Out, which found that the CSAPR Update was a complete remedy based on air quality analysis of the year 2023.[3]

On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the CSAPR Update, concluding that it was invalid in one respect because it unlawfully allowed upwind states to continue their significant contributions to downwind air quality problems beyond the statutory dates by which downwind States must demonstrate their attainment of ozone air quality standards. *Wisconsin* v. *EPA,* 938 F.3d 303, 318–20 (D.C. Cir. 2019) (*Wisconsin*) (per curiam); *see also id.* 336–37 (concluding that remand without vacatur was appropriate). Subsequently, on October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds on which it had remanded without vacatur the CSAPR Update in *Wisconsin. New York* v. *EPA,* 781 Fed. App'x 4, 7 (D.C. Cir. 2019) (*New York*). The court found the CSAPR Close-Out inconsistent with the *Wisconsin* holding because the rule analyzed the year 2023 rather than 2021 (''the next applicable attainment date'') and failed to demonstrate that it was an impossibility to address significant contribution by the 2021 attainment date.

In this proposal to revise the CSAPR Update on remand, in compliance with *Wisconsin* and *New York,* EPA has aligned its analysis and the implementation of emission reductions required to address significant contribution with the 2021 ozone season, which corresponds to the July 20, 2021, Serious area attainment date for the 2008 ozone NAAQS. EPA has further determined which emission reductions are impossible to achieve by the 2021 attainment date and whether any such additional emission reductions should be required beyond that date, *see Wisconsin,* 938 F.3d at 320; *New York,* 781 Fed. App'x at 7.

Unless explicitly raised in this proposal, EPA is not reopening any determinations, findings, or statutory or regulatory interpretations that are not required to address the *Wisconsin* remand. This proposed action addressing the remand of the CSAPR Update in *Wisconsin* will also have the effect of addressing the outstanding obligations that resulted from the D.C. Circuit's vacatur of the CSAPR Close-Out in *New York. See New York,* 781 Fed. App'x at 7.

*A. Purpose of the Regulatory Action*

The purpose of this rulemaking is to protect public health and welfare by reducing interstate transport of certain emissions that significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in the U.S. Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. Ozone exposure can also negatively impact ecosystems, for example, by limiting tree growth. Studies have established that ozone transport occurs on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.[4] [5] As discussed in more detail in Section V.A.1, assessments of ozone control approaches have concluded that nitrogen oxides ($NO_X$) control strategies are effective to reduce regional-scale ozone transport.[6]

Clean Air Act (CAA or the Act) section 110(a)(2)(D)(i)(I), which is also known as the ''good neighbor provision,'' requires states to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance in any other state with respect to any primary or secondary NAAQS.[7] The statute vests states with the primary responsibility to address interstate emission transport through the development of good neighbor State Implementation Plans (SIPs), which are one component of larger SIP submittals typically required three years after EPA promulgates a new or revised NAAQS. These larger SIPs are often referred to as ''infrastructure'' SIPs or iSIPs. *See* CAA section 110(a)(1) and (2). EPA supports state efforts to submit good neighbor SIPs for the 2008 ozone NAAQS and has shared information with states to facilitate such SIP submittals. However, the CAA also requires EPA to fill a backstop role by issuing Federal Implementation Plans (FIPs) where states fail to submit good neighbor SIPs or EPA disapproves a submitted good neighbor SIP. *See generally* CAA section 110(k) and 110(c).

On October 26, 2016, EPA published the CSAPR Update, which finalized FIPs for 22 states that EPA found failed to submit a complete good neighbor SIP (15 states) [8] or for which EPA issued a final rule disapproving their good neighbor SIP (7 states).[9] The FIPs promulgated for these states included new electric generating units (EGUs) $NO_X$ ozone season emission budgets to reduce interstate transport for the 2008 ozone NAAQS. These emission budgets took effect in 2017 in order to assist downwind states with attainment of the 2008 ozone NAAQS by the 2018 Moderate area attainment date. EPA acknowledged at the time that the FIPs promulgated for 21 of the 22 states only partially addressed good neighbor obligations under the 2008 ozone NAAQS.[10] The 22 states for which EPA promulgated FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS are listed in Table I.A–1.

TABLE I.A—1 LIST OF 22 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS IN THE CSAPR UPDATE

| State |
|---|
| Alabama |
| Arkansas |
| Illinois |
| Indiana |
| Iowa |
| Kansas |
| Kentucky |
| Louisiana |
| Maryland |
| Michigan |
| Mississippi |
| Missouri |
| New Jersey |

[1] 73 FR 16436 (March 27, 2008).

[2] In the CSAPR Update, EPA found that the finalized Tennessee emission budget fully addressed Tennessee's good neighbor obligation with respect to the 2008 ozone NAAQS. 81 FR 74504, 74508 n. 19 (Oct. 26, 2016).

[3] 83 FR 65878 (Dec. 21, 2018).

[4] Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of $NO_X$ and $SO_2$ emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[5] Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. Atmospheric Environment 84, 100–112.

[6] *See also* 82 FR 51238, 51248 (Nov. 3, 2017) (citing 76 FR 48208, 48222 (Aug. 8, 2011)) and 63 FR 57381 (Oct. 27, 1998).

[7] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[8] Alabama, Arkansas, Illinois, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia.

[9] Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.

[10] In the CSAPR Update, EPA found that the finalized Tennessee emission budget fully addressed Tennessee's good neighbor obligation with respect to the 2008 ozone NAAQS.

TABLE I.A—1 LIST OF 22 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS IN THE CSAPR UPDATE

| State |
|---|
| New York |
| Ohio |
| Oklahoma |
| Pennsylvania |
| Tennessee |
| Texas |
| Virginia |
| West Virginia |
| Wisconsin |

In response to the D.C. Circuit's remand of the CSAPR Update in *Wisconsin* v. *EPA* and the court's vacatur of the CSAPR Close-Out in *New York* v. *EPA,* this rule proposes to find that 12 of the 22 states listed in Table I.A–1 require further ozone season $NO_X$ emission reductions to address the good neighbor provision as to the 2008 ozone NAAQS. As such, EPA proposes to promulgate new or revised FIPs for these states that include new EGU $NO_X$ ozone season emission budgets, with implementation of these emission budgets beginning with the 2021 ozone season.[11] The 12 states for which EPA is proposing to promulgate new or revised FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS in this rulemaking are listed in Table I.A–2.

TABLE I.A—2 PROPOSED LIST OF 12 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS

| State |
|---|
| Illinois |
| Indiana |
| Kentucky |
| Louisiana |
| Maryland |
| Michigan |
| New Jersey |
| New York |
| Ohio |
| Pennsylvania |
| Virginia |
| West Virginia |

EPA also proposes to adjust these states' emission budgets for each ozone season thereafter to incentivize ongoing operation of identified emission controls to address significant contribution, until such time that our air quality projections demonstrate resolution of the downwind nonattainment and/or maintenance problems for the 2008 ozone NAAQS. No further budget adjustments would be made after that time (*i.e.,* after the 2024 ozone season in EPA's proposed analysis). EPA proposes to implement the new state-level ozone season emission budgets through a new CSAPR $NO_X$ Ozone Season Group 3 Trading Program. Based on EPA's assessment of remaining air quality issues and additional emission control strategies, EPA further proposes to find that these $NO_X$ emission reductions fully eliminate these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS.

As discussed in more detail in Section V.C.2.b below, for one state, Kentucky, EPA is proposing to make an error correction under CAA section 110(k)(6) of its June 2018 approval of that state's SIP, which had concluded that the CSAPR Update was a complete remedy based on modeling of the 2023 analytic year. EPA proposes to determine that the basis for that conclusion has been invalidated by the decisions in *Wisconsin* and *New York,* and that Kentucky's good neighbor obligations are outstanding. In light of the *Wisconsin* remand of Kentucky's FIP and our proposed error correction, EPA has the necessary authority to amend the CSAPR Update FIP for Kentucky.

For the nine remaining states with FIPs promulgated under the CSAPR Update that EPA previously found partially addressed good neighbor obligations for the 2008 ozone NAAQS (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), EPA's updated air quality and contributions analysis shows that these states are not linked to any downwind air quality problems in 2021.[12] Therefore, EPA proposes to find that the existing CSAPR Update FIPs (or the SIP revisions later approved to replace the CSAPR Update FIPs) for these states satisfy their good neighbor obligations for the 2008 ozone NAAQS.[13] Consequently, EPA is not proposing to require additional emission reductions from sources in these states in this proposed rulemaking.

*B. Summary of the Major Provisions of the Regulatory Action*

To reduce interstate ozone transport under the authority provided in CAA section 110(a)(2)(D)(i)(I), this rule proposes to further limit ozone season (May 1 through September 30) $NO_X$ emissions from EGUs in 12 states using the same framework used by EPA in developing the CSAPR and other good neighbor rules (the 4-step good neighbor framework or 4-step framework). The 4-step good neighbor framework provides a process to address the requirements of the good neighbor provision for ground-level ozone NAAQS: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems (*i.e.,* here, a 1 percent contribution threshold); (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emissions reductions through enforceable measures. In this proposed rule, EPA applies this 4-step framework to respond to the D.C. Circuit's remand and to revise the CSAPR Update with respect to the 2008 ozone NAAQS.

In order to apply the first step of the 4-step framework to the 2008 ozone NAAQS, EPA performed air quality modeling coupled with ambient measurements in an interpolation technique to project ozone concentrations at air quality monitoring sites in 2021.[14] EPA evaluated 2021 projected ozone concentrations at individual monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2008 ozone NAAQS.

[11] As discussed in section V.C.2.c., in 2018 EPA approved a SIP revision for Indiana replacing the state's CSAPR Update FIP with equivalent state regulations. This SIP revision, like the CSAPR Update FIP it replaced, was partial in nature. EPA is therefore proposing in this action to issue a new FIP rather than a revised FIP for Indiana.

[12] EPA's use of a contribution threshold to determine, without further analysis of potential emissions reduction opportunities, that certain states have no remaining good neighbor obligations with respect to a given NAAQS is part of the analytic approach that was followed in the CSAPR rulemaking and upheld by the Supreme Court. *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 521–22 (2014).

[13] As discussed in section V.C.2.c., in 2017 and 2019 EPA approved SIP revisions for Alabama and Missouri replacing the states' CSAPR Update FIPs with equivalent state regulations. These SIP revisions, like the CSAPR Update FIPs they replaced, were partial in nature. EPA is therefore proposing to determine in this action that the states' existing SIP provisions satisfy these states' good neighbor obligations for the 2008 ozone NAAQS.

[14] The next relevant attainment date for the 2008 ozone NAAQS is July 20, 2021, for Serious nonattainment areas. 80 FR 12264, 12268; 40 CFR 51.1103.

To apply the second step of the framework, EPA used air quality modeling and an interpolation technique to quantify the contributions from upwind states to ozone concentrations in 2021 at downwind receptors. Once quantified, EPA then evaluated these contributions relative to a screening threshold of 1 percent of the NAAQS (*i.e.,* 0.75 ppb). States with contributions that equal or exceed 1 percent of the NAAQS were identified as warranting further analysis for significant contribution to nonattainment or interference with maintenance. States with contributions below 1 percent of the NAAQS were considered to not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. Based on EPA's updated air quality and contribution analysis using 2021 as the analytic year, EPA proposes that the following 12 states have contributions that equal or exceed 1 percent of the 2008 ozone NAAQS, and thereby warrant further analysis for significant contribution to nonattainment or interference with maintenance: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

At the third step of the 4-step framework, EPA applied the multi-factor test used in the CSAPR Update, which evaluates cost, available emission reductions, and downwind air quality impacts to determine the amount of linked upwind states' emissions that ''significantly'' contribute to downwind nonattainment or maintenance receptors. In this action, EPA applies the multifactor test to both EGU and non-EGU source categories and assesses potential emission reductions in all years for which there is a potential remaining interstate ozone transport problem (*i.e.,* through 2025), in order to ensure a full remedy in compliance with the *Wisconsin* decision.

EPA identified a control strategy that reflects the optimization of existing selective catalytic reduction (SCR) controls and installation of state-of-the-art $NO_X$ combustion controls at EGUs, with an estimated marginal cost of $1,600 per ton. It is at this control stringency where incremental EGU $NO_X$ reduction potential and corresponding downwind ozone air quality improvements are maximized. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other control stringency levels evaluated. EPA finds that these very cost-effective EGU $NO_X$ reductions will make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS, as discussed in section VII.D.1 below. Further, this evaluation shows that emission budgets reflecting the $1,600 per ton cost threshold do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at step 1 or the 1 percent contribution threshold that triggers further evaluation at step 2 of the 4-step framework.

EPA notes that these proposed EGU control strategies (optimization of existing SCR controls and installation of state-of-the-art $NO_X$ combustion controls) were the same strategies selected in the CSAPR Update for the 2017 ozone season, and which at that time EPA characterized as only a partial remedy. For this rule, EPA extends its evaluation of the reduction potential from these control strategies to years beyond 2017 in order to assess a full remedy. EPA's updated analysis, as discussed in more detail in Section VII, leads the Agency to propose that these control strategies can provide additional cost-effective emission reductions for the 2021 through 2024 ozone seasons. While EPA's analysis indicates that the majority of EGUs implemented these control strategies in response to the CSAPR Update, changes in the power sector since the 2017 ozone season and updated air quality and contribution analysis show that there is a demonstrated need to update the emission budgets for these 12 states to fully eliminate significant contribution.

For non-EGU industry sectors and emissions sources, EPA applied the step 3 multi-factor test to determine whether any emissions reductions should be required from non-EGU sources to address significant contribution under the 2008 ozone NAAQS. EPA acknowledges that its current datasets with information on emissions, existing controls on emissions sources, emission-reduction potential, and air quality impacts for these sources are relatively incomplete and uncertain compared to the datasets it has for EGUs. Nonetheless, using the best information currently available to the Agency, the proposed analysis suggests that there are relatively fewer emissions reductions available at a cost threshold comparable to the cost threshold selected for EGUs. Such reductions are estimated to have a relatively small effect on any downwind receptor in the year by which such controls could likely be installed. For these reasons, EPA proposes that limits on ozone season $NO_X$ emissions from non-EGU sources are not required to eliminate ''significant'' contribution under the 2008 ozone NAAQS (see section VII.D.2).

To improve the underlying data and assessment of emission reduction potential from non-EGU sources for this and future regulatory efforts, EPA is soliciting comment on the assessment of emission reduction potential from the glass and cement manufacturing sectors discussed in Sections VII.B.2, VII.C.2, and VII.D.2. In addition, EPA summarizes the available information on all potential control measures for non-EGU emissions sources or units with 150 tons per year or more of pre-control $NO_X$ emissions in several industry sectors for the 12 states in Table I.A–2. This information illustrates that there are many potential approaches to assessing emissions reductions from non-EGU emissions sources or units. EPA is soliciting comment on the completeness and accuracy of this additional information on potential control measures for non-EGU emissions sources or units in several industry sectors. Specifically, EPA summarized information on the application, costs, and installation timing of ultra-low $NO_X$ burners on industrial, commercial, and institutional (ICI) boilers and low emission combustion on reciprocating internal combustion (IC) engines.

Based on EPA's analysis at step 3, the Agency proposes EGU $NO_X$ ozone season emission budgets developed using uniform control stringency represented by $1,600 per ton. EPA proposes to determine that with implementation of this control strategy, the 12 states in Table I.A–2 will have fully addressed significant contribution under the good neighbor provision for the 2008 ozone NAAQS. EPA is proposing to align implementation of emission budgets with relevant attainment dates for the 2008 ozone NAAQS, as required by the D.C. Circuit's decision in *Wisconsin* v. *EPA.*[15] As EPA's final 2008 Ozone NAAQS SIP Requirements Rule[16] established the attainment deadline of July 20, 2021, for ozone nonattainment

[15] 938 F.3d 303, 320 (D.C. Cir. 2019) (holding that EPA must align interstate transport compliance deadlines with downwind attainment deadlines unless EPA can demonstrate an impossibility or other necessity).

[16] 80 FR 12264, 12268; 40 CFR 51.1103.

areas currently designated as Serious, EPA proposes to establish emission budgets and implementation of these emission budgets starting with the 2021 ozone season as shown in Table I.B–1.

TABLE I.B—1 PROPOSED EGU $NO_X$ OZONE SEASON EMISSION BUDGETS EMISSIONS

[Ozone season $NO_X$ tons] *

| State | 2021 Budget | 2022 Budget | 2023 Budget | 2024 Budget |
|---|---|---|---|---|
| Illinois | 9,444 | 9,415 | 8,397 | 8,397 |
| Indiana | 12,500 | 11,998 | 11,998 | 9,447 |
| Kentucky | 14,384 | 11,936 | 11,936 | 11,936 |
| Louisiana | 15,402 | 14,871 | 14,871 | 14,871 |
| Maryland | 1,522 | 1,498 | 1,498 | 1,498 |
| Michigan | 12,727 | 11,767 | 9,803 | 9,614 |
| New Jersey | 1,253 | 1,253 | 1,253 | 1,253 |
| New York | 3,137 | 3,137 | 3,137 | 3,119 |
| Ohio | 9,605 | 9,676 | 9,676 | 9,676 |
| Pennsylvania | 8,076 | 8,076 | 8,076 | 8,076 |
| Virginia | 4,544 | 3,656 | 3,656 | 3,395 |
| West Virginia | 13,686 | 12,813 | 11,810 | 11,810 |
| Total | 106,280 | 100,096 | 96,111 | 93,092 |

* **Note**—the 2022 and beyond budgets incorporate the installation of state-of-the-art $NO_X$ combustion controls; whereas the 2021 budgets do not. Additionally, the 2024 emissions budget applies to 2024 and each year thereafter.

As noted in Section I, EPA further determined which emission reductions are impossible to achieve by the 2021 attainment date—and whether any such additional emission reductions should be required beyond that date.[17] *See Wisconsin,* 938 F.3d at 320. EPA estimates that one part of the selected control strategy—installation of state-of-the-art $NO_X$ combustion controls—can occur between approximately one to six months at any particular unit. As the final rule will likely become effective either immediately prior to or slightly after the start of the 2021 ozone season, EPA determined it is not possible to install state-of-the-art $NO_X$ combustion controls on a regional scale by the beginning of the 2021 ozone season.[18] EPA proposes to conclude that an emission reduction strategy is impossible if it cannot be implemented statewide by the relevant attainment date because statewide budgets are based on fleetwide averages. Therefore, the proposed 2021 ozone season emission budgets reflect only the control strategy of optimizing existing SCR controls at the affected EGUs, but the proposed emission budgets for the 2022 ozone season and beyond reflect both the continued optimization of existing SCR controls and installation of state-of-the-art $NO_X$ combustion controls. Detailed installation-timing information for this technology is available in Section VII.B and the EGU $NO_X$ Mitigation Strategies TSD.

As discussed in section VII.D.1, EPA's air quality projections anticipate that with the implementation of the identified control stringency for EGUs represented by $1,600 per ton, downwind nonattainment and maintenance problems for the 2008 ozone NAAQS will persist through the 2024 ozone season. Therefore, EPA is proposing to adjust emission budgets for upwind states that remain linked to downwind nonattainment and maintenance problems through the 2024 ozone season to incentivize the continued optimization of existing SCR controls and installation of state-of-the-art $NO_X$ combustion controls. The 2024 emission budgets would then continue to apply in each year thereafter.

As discussed below, EPA notes that emissions budgets are implemented through the market-based mechanism of a trading program for emission allowances. Under such a trading program, sources have the compliance flexibility to make emissions reductions themselves or to purchase allowances from other sources (either directly from those sources or indirectly through a third party) that do not need those allowances to cover their remaining emissions. Given this compliance flexibility, EPA is taking comment on whether delaying the incorporation of emission reduction potential from the installation of state-of-the-art $NO_X$ combustion controls into state emission budgets until 2022 is necessary (Comment C–1).

To apply the fourth step of the 4-step framework (*i.e.,* implementation), EPA proposes to include enforceable measures in the promulgated FIPs to achieve the required emission reductions in each of the 12 states. Specifically, the FIPs would require power plants in the 12 states to participate in a new CSAPR $NO_X$ Ozone Season Group 3 Trading Program that largely replicates the existing CSAPR $NO_X$ Ozone Season Group 2 Trading Program; with the main differences being the geography and budget stringency. Aside from the removal of the 12 covered states from the current CSAPR $NO_X$ Ozone Season Group 2 Trading Program, this proposal leaves unchanged the budget stringency and geography of the existing CSAPR $NO_X$ Ozone Season Group 1 and Group 2 trading programs.

For this rulemaking, EPA is proposing to authorize a one-time conversion of allowances banked in 2017–2020 under the CSAPR Update $NO_X$ Ozone Season Group 2 Trading Program into a limited number of allowances that can be used for compliance in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. Similar to the approach taken in the CSAPR Update, EPA is proposing to base the conversion on a formula that ensures emissions in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program region do not exceed a specified level (defined as emissions up to the sum of

[17] As described in detail in Sections VII.B and VII.C, some mitigation efforts that require the installation of significant new plant hardware (*e.g.,* combustion control upgrade, selective catalytic reduction, and non-selective catalytic reduction) are not possible by the start of the 2021 ozone season. However, EPA proposes some of these measures (*i.e.,* combustion controls) be factored into its quantification of significant contribution starting at the later date of the start of the 2022 ozone season.

[18] On July 28, 2020, the U.S. District Court for the Southern District of New York issued a decision establishing a deadline of March 15, 2021, for EPA to issue a final rule fully resolving good neighbor obligations under the 2008 ozone NAAQS for seven upwind states. *New Jersey* v. *Wheeler,* No. 1:20–cv–01425 (S.D.N.Y. July 28, 2020).

the states' ozone season emissions budgets and variability limits) as a result of the use of banked allowances from the Group 2 trading program. EPA also proposes to provide a process through which holders of Group 2 allowances in non-facility accounts (''general'' accountholders) could designate any Group 2 allowances that they do not wish to have converted to Group 3 allowances.

The remainder of this preamble is organized as follows: Section IV describes EPA's legal authority for this proposed action; section V describes the human health and environmental context, as well as EPA's proposed approach for addressing interstate transport for the 2008 ozone NAAQS; section VI describes its assessment of downwind receptors of concern and upwind state ozone contributions to those receptors, including the air quality modeling platform and emission inventories that EPA used; section VII describes EPA's approach to quantify upwind state obligations in the form of final EGU $NO_X$ emission budgets; section VIII details the implementation requirements including key elements of the CSAPR trading program and deadlines for compliance; section IX describes the expected costs, benefits, and other impacts of this proposed rule; section X discusses changes to the existing regulatory text; and section XI discusses the statutes and executive orders affecting this proposed rulemaking.

*C. Costs and Benefits*

A summary of the key results of the cost-benefit analysis that was prepared for this proposed rule is presented in Table I.C–1. Table I.C–1 presents estimates of the present values (PV) and equivalent annualized values (EAV), calculated using discount rates of 3 and 7 percent as directed by OMB's Circular A–4, of the compliance costs, climate benefits, and net benefits of the proposed rule, in 2016 dollars, discounted to 2021. The estimated net benefits are the estimated benefits minus the estimated costs of the proposed rule. The table represents the present value of non-monetized benefits from ozone, $PM_{2.5}$ and $NO_2$ reductions as a β, while b represents the equivalent annualized value of these non-monetized benefits. These values will differ across the discount rates and depend on the B's in Tables IX.4 and IX.5 presented in Section IX.

TABLE I.C—1 ESTIMATED COMPLIANCE COSTS, CLIMATE BENFITS AND NET BENEFITS OF THE PROPOSED RULE, 2021 THROUGH 2025

[Millions 2016$, discounted to 2021]

| | 3% Discount rate | 7% Discount rate |
|---|---|---|
| *Present Value:* | | |
| Benefits [c d] | 101+β | 15+β |
| Climate Benefits [c] | 101 | 15 |
| Compliance Costs [e] | 87 | 83 |
| Net Benefits | 14+β | −68+β |
| *Equivalent Annualized Value:* | | |
| Benefits | 22+b | 4+b |
| Climate Benefits | 22 | 4 |
| Compliance Costs | 19 | 20 |
| Net Benefits | 3+b | −17+b |

[a] All estimates in this table are rounded to two significant figures, so numbers may not sum due to independent rounding.
[b] The annualized present value of costs and benefits are calculated over a 5 year period from 2021 to 2025.
[c] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in $CO_2$ emissions.
[d] β and b is the sum of all unquantified ozone, $PM_{2.5}$, and $NO_2$ benefits. The annual values of β and b will differ across discount rates. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs [19 20] to provide information regarding the potential magnitude of the benefits of this proposed rule.
[e] The costs presented in this table reflect annualized present value compliance costs calculated over a 5 year period from 2021 to 2025.

Table 1.C–1 does not include quantified and monetized health benefits associated with reduced exposures to concentrations of ground-level ozone and fine particulates. The Agency intends to update its approach for quantifying the benefits of air quality changes by considering the evidence reported in recently completed Integrated Science Assessments for ground-level ozone and fine particulates and accounting for forthcoming recommendations from the Science Advisory Board on this issue. This process is still underway and will not be completed in time for this proposed rule. See Section IX of this preamble for more discussion. However, to provide perspective regarding the scope of the estimated benefits, Appendix 5B of the RIA illustrates the potential health effects associated with the changes in $PM_{2.5}$ and ozone concentrations as calculated using methods developed prior to the 2019 p.m. ISA and 2020 Ozone ISA. That analysis provides perspective regarding the scope of the estimated benefits. EPA is in the process of recalibrating its benefits estimates for all PM and ozone health endpoints. EPA intends to update its quantitative methods for estimating the number and economic value of $PM_{2.5}$ and ozone health effects in time for publication as part of the final rule.

As shown in Table I.C–1, the PV of the climate benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about $15 million, with an EAV of about $4 million. At a 3-percent discount rate, the PV of the climate benefits is estimated to be about $101 million, with an EAV of $22 million. The PV of the compliance costs, discounted at a 7-percent rate, is estimated to be about $83 million, with an EAV of about $20 million. At a 3-percent discount rate, the PV of the compliance costs is estimated to be about $87 million, with an EAV of about

[19] U.S. Environmental Protection Agency (U.S. EPA). 2009. Integrated Science Assessment for Particulate Matter (Final Report). EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division, Research Triangle Park, NC. December. Available at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546*>.

[20] U.S. Environmental Protection Agency (U.S. EPA). 2013. Integrated Science Assessment of Ozone and Related Photochemical Oxidants (Final Report). EPA/600/R–10/076F. National Center for Environmental Assessment—RTP Division, Research Triangle Park. Available at: *http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492#Download*>.

$19 million. The PV of the net benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about −$68 million, with an EAV of about −$17 million. At a 3-percent discount rate, the PV of the net benefits is estimated to be about $14 million, with an EAV of about $3 million .

## II. Public Participation

### *A. Written Comments*

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0272, at *https://www.regulations.gov*. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

EPA is temporarily suspending its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID–19. Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov*. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets*.

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

### *B. Participation in Virtual Public Hearing*

Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update* or contact Ms. Kimberly Liu at *liu.kimberly@epa.gov* or 202–564–6586 to register to speak at the virtual hearing. The last day to pre-register to speak at the hearing will be November 6, 2020. On November 10, 2020, EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update*.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email) by emailing it to Ms. Kimberly Liu at *liu.kimberly@epa.gov*. EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update*. While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Ms. Kimberly Liu at *liu.kimberly@epa.gov* or 202–564–6586 to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing with Kimberly Liu at *liu.kimberly@epa.gov* or 202–564–6586 and describe your needs by November 5, 2020. EPA may not be able to arrange accommodations without advanced notice.

## III. General Information

### *A. Does this action apply to me?*

This proposed rule affects EGUs, and regulates the groups identified in Table III.A–1:

TABLE III.A–1—REGULATED GROUPS

| Industry group | NAICS * |
|---|---|
| Fossil fuel-fired electric power generation | 221112 |

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. For example, as discussed in Section VII.D.2 below, EPA is requesting comment on potential control strategies for emissions sources and industry sectors outside of the fossil fuel-fired power sector. Some of these industry sectors include cement, glass, chemical, and paper manufacturing, pipeline transportation, and oil and gas extraction. To determine whether your EGU entity is proposed to be regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 97.804, which EPA is not proposing to alter in this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

## IV. EPA's Legal Authority for the Proposed Rule

### *A. Statutory Authority*

The statutory authority for this final action is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this action. The most relevant portions of CAA section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)), 110(c)(1), and 110(k)(6).

CAA section 110(a)(1) provides that states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and that these SIP submissions are to provide for the ''implementation, maintenance, and

enforcement'' of such NAAQS.[21] The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA taking any action other than promulgating a new or revised NAAQS.[22]

EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' or ''iSIP'' submissions. CAA section 110(a)(1) addresses the timing and general requirements for iSIP submissions, and CAA section 110(a)(2) provides more details concerning the required content of these submissions.[23] It includes a list of specific elements that ''[e]ach such plan'' submission must address.[24]

CAA section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator: (1) Finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.[25]

CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' provides the primary basis for this proposal.[26] It requires that each state SIP include provisions sufficient to ''prohibit[ ], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' [27] EPA often refers to the emission reduction requirements under this provision as ''good neighbor obligations'' and submissions addressing these requirements as ''good neighbor SIPs.''

Once EPA promulgates a NAAQS, EPA must designate areas as being in ''attainment'' or ''nonattainment'' of the NAAQS, or ''unclassifiable.'' CAA section 107(d).[28] For ozone, nonattainment is further split into five classifications based on the severity of the violation—Marginal, Moderate, Serious, Severe, or Extreme. Higher classifications provide States with progressively more time to attain and additional control requirements. *See* CAA sections 181, 182.[29] In general, states with nonattainment areas classified as Moderate or higher must submit plans to EPA to bring these areas into attainment according to the statutory schedule. CAA section 182.[30] If an area fails to attain the NAAQS by the attainment date associated with its classification, it is ''bumped up'' to the next classification. CAA section 181(b).[31]

Section 301(a)(1) of the CAA also gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.[32] Pursuant to this section, EPA has authority to clarify the applicability of CAA requirements and undertake other rulemaking action as necessary to implement CAA requirements. In this proposal, among other things, EPA is clarifying the applicability of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. In particular, EPA is using its authority under CAA sections 110 and 301 to issue new or amended FIPs to revise $NO_X$ ozone season emission budgets for 12 states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in another state, and EPA is making findings as to 9 additional states that the CSAPR Update FIPs (or SIP revisions later approved to replace those FIPs) are a complete remedy and need no further revision.[33] In addition, EPA is obligated to respond to the D.C. Circuit's remand of the CSAPR Update in *Wisconsin* v. *EPA,* 938 F.3d 303, with respect to the 21 states for which the FIPs created by that rule were found to be only a partial remedy. This proposal, if finalized, will wholly resolve the Agency's obligations on remand. Finally, CAA section 301[34] affords the Agency any additional authority that may be needed in order to make certain other changes to its regulations under 40 CFR parts 52, 78, and 97, as discussed in Section VIII of this preamble.

*B. Prior Good Neighbor Rulemakings Addressing Regional Ozone*

EPA has issued several rules interpreting and clarifying the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the regional transport of ozone for states in the eastern United States. These rules, and the associated court decisions addressing these rules, summarized here, provide important direction regarding the requirements of CAA section 110(a)(2)(D)(i)(I).

The $NO_X$ SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.[35] The rule required 22 states and the District of Columbia to amend their SIPs to reduce $NO_X$ emissions that contribute to ozone nonattainment in downwind states. EPA set ozone season $NO_X$ budgets for each state, and the states were given the option to participate in a regional trading program, known as the $NO_X$ Budget Trading Program.[36] The D.C. Circuit largely upheld the $NO_X$ SIP Call in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000), *cert. denied,* 532 U.S. 904 (2001).

EPA's next rule addressing the good neighbor provision, the Clean Air Interstate Rule (CAIR), was promulgated in 2005 and addressed both the 1997 fine particulate matter ($PM_{2.5}$) NAAQS and 1997 ozone NAAQS.[37] CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide ($SO_2$) and/or $NO_X$—important precursors of regionally transported $PM_{2.5}$ ($SO_2$ and annual $NO_X$) and ozone (summer-time $NO_X$). As in the $NO_X$ SIP Call, states were given the option to participate in regional trading programs to achieve the reductions. When EPA promulgated the

[21] 42 U.S.C. 7410(a)(1).

[22] *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509–10 (2014).

[23] 42 U.S.C. 7410(a)(2).

[24] EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. *See, e.g.,* Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[25] 42 U.S.C. 7410(c)(1).

[26] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[27] *Id.*

[28] 42 U.S.C. 7407(d).

[29] 42 U.S.C. 7511, 7511a.

[30] 42 U.S.C. 7511a.

[31] 42 U.S.C. 7511(b).

[32] 42 U.S.C. 7601(a)(1).

[33] 42 U.S.C. 7410, 7601.

[34] 42 U.S.C. 7601.

[35] 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the $NO_X$ SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 84 FR 8422 (March 8, 2019).

[36] ''Allowance Trading,'' sometimes referred to as ''cap and trade,'' is an approach to reducing pollution that has been used successfully to protect human health and the environment. Trading programs have two key components: Emissions budgets (the sum of which provide a cap on emissions), and tradable allowances equal to the budgets that authorize allowance holders to emit a specific quantity (*e.g.,* one ton) of the pollutant. This approach ensures that the environmental goal is met while the tradable allowances provide flexibility for individual participants to establish and follow their own compliance path. Because allowances can be bought and sold in an allowance market, these programs are often referred to as ''market-based.''

[37] 70 FR 25162 (May 12, 2005).

final CAIR in 2005, EPA also issued findings that states nationwide had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and 1997 ozone NAAQS.[38] On March 15, 2006, EPA promulgated FIPs to implement the emission reductions required by CAIR.[39] CAIR was remanded to EPA by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more information on the legal issues underlying CAIR and the D.C. Circuit's holding in *North Carolina,* refer to the preamble of the CSAPR rule.[40]

In 2011, EPA promulgated the CSAPR to address the issues raised by the remand of CAIR. The CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[41] The CSAPR required 28 states to reduce $SO_2$ emissions, annual $NO_X$ emissions, and/or ozone season $NO_X$ emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards.[42] To align implementation with the applicable attainment deadlines, EPA promulgated FIPs for each of the 28 states covered by the CSAPR. The FIPs require EGUs in the covered states to participate in regional trading programs to achieve the necessary emission reductions. Each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR FIP for that state.

The CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.[43] However, this decision was reversed in April 2014 by the Supreme Court, which largely upheld the rule, including EPA's approach to addressing interstate transport in the CSAPR. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014) (*EME Homer City I*). The rule was remanded to the D.C. Circuit to consider claims not addressed by the Supreme Court. *Id.* In July 2015 the D.C. Circuit generally affirmed EPA's interpretation of various statutory provisions and EPA's technical decisions. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). However, the court remanded the rule without vacatur for reconsideration of EPA's emissions budgets for certain states, which the court found may have over-controlled those states' emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal issues associated with the CSAPR and the Supreme Court's and D.C. Circuit's decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.[44]

In 2016, EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS.[45] The final rule generally updated the CSAPR ozone season $NO_X$ emissions budgets for 22 states to achieve cost-effective and immediately feasible $NO_X$ emission reductions from EGUs within those states.[46] EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season in order to assist downwind states with timely attainment of the 2008 ozone NAAQS.[47] The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR $NO_X$ ozone season trading program beginning with the 2017 ozone season. As under the CSAPR, each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR Update FIP for that state. The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states' CSAPR phase 2 ozone season $NO_X$ emissions budgets in *EME Homer City II.* Further details regarding the CSAPR Update are discussed in Sections V.C.1.a–b below.

In December 2018, EPA promulgated the CSAPR ''Close-Out,'' which determined that no further enforceable reductions in emissions of $NO_X$ were required with respect to the 2008 ozone NAAQS for 20 of the 22 eastern states covered by the CSAPR Update, and reflected that determination in revisions to the existing state-specific sections of the CSAPR Update regulations for those states.[48] Further details on the CSAPR Close-Out are discussed in Section V.C.1.c below.

The CSAPR Update and the CSAPR Close-Out were both subject to legal challenges in the D.C. Circuit. *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*); *New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019) (*New York*). As discussed in greater detail in Section V.C.1.d below, in September 2019, the D.C. Circuit upheld the CSAPR Update in virtually all respects, but remanded the rule because it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by ''the relevant downwind attainment deadlines'' in the CAA. *Wisconsin,* 938 F.3d at 313–15. In October 2019, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds that it remanded the CSAPR Update in *Wisconsin,* specifically that the Close-Out rule did not analyze ''the next applicable attainment date'' of downwind states. *New York,* 781 Fed. App'x at 7.

## V. Air Quality Issues Addressed and Overall Approach for the Proposed Rule

### *A. The Interstate Ozone Transport Challenge*

Interstate transport of $NO_X$ emissions poses significant challenges with respect to the 2008 ozone NAAQS in the eastern U.S. and thus presents a threat to public health and welfare.

#### 1. Nature of Ozone and the Ozone NAAQS

Ground-level ozone is not emitted directly into the air but is created by chemical reactions between $NO_X$ and volatile organic compounds (VOC) in

[38] 70 FR 21147 (April 25, 2005).

[39] 71 FR 25328 (April 28, 2006).

[40] 76 FR 48208, 48217 (Aug. 8, 2011).

[41] 76 FR 48208.

[42] The CSAPR was revised by several rulemakings after its initial promulgation in order to revise certain states' budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. See 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012).

[43] On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating the CSAPR. EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider EPA's appeal *en banc. EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying EPA's motion for rehearing en banc).

[44] 81 FR 74504, 74511 (Oct. 26, 2016).

[45] 81 FR 74504.

[46] One state, Kansas, was made newly subject to the CSAPR ozone season $NO_X$ requirement by the CSAPR Update. All other CSAPR Update states were already subject to ozone season $NO_X$ requirements under the CSAPR.

[47] 81 FR 74516. EPA's final 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (Mar. 6, 2015), revised the attainment deadline for ozone nonattainment areas designated as Moderate to July 20, 2018. *See* 40 CFR 51.1103. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season.

[48] 83 FR 65878, 65882 (Dec. 21, 2018). After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, EPA approved a SIP from Kentucky resolving that state's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). In this action, EPA is proposing an error correction under CAA section 110(k)(6) to convert this approval to a disapproval, because the Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out. Our action with respect to Kentucky is discussed in Section V.C.2.b. below.

the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of $NO_X$ and VOC.

Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer. Increased temperature also increases emissions of volatile man-made and biogenic organics and can indirectly increase $NO_X$ emissions as well (*e.g.,* increased electricity generation for air conditioning).

The 2008 primary and secondary ozone standards are both 75 ppb as an 8-hour level.[49] Specifically, the standards require that the 3-year average of the fourth highest 24-hour maximum 8-hour average ozone concentration may not exceed 75 ppb as a truncated value (*i.e.,* digits to right of decimal removed).[50] In general, areas that exceed the ozone standard are designated as nonattainment areas, pursuant to the designations process under CAA section 107 and are subject to heightened planning requirements depending on the degree of severity of their nonattainment classification, *see* CAA sections 181, 182.

2. Ozone Transport

Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.,* thousands of kilometers) over much of the eastern U.S.[51] While substantial progress has been made in reducing ozone in many areas, interstate ozone transport is still an important component of peak ozone concentrations during the summer ozone season.

EPA has previously concluded in the $NO_X$ SIP Call, CAIR, and the CSAPR that, for reducing regional-scale ozone transport, a $NO_X$ control strategy would be most effective. $NO_X$ emissions can be transported downwind as $NO_X$ or, after transformation in the atmosphere, as ozone. As a result of ozone transport, in any given location, ozone pollution levels are impacted by a combination of local emissions and emissions from upwind sources. The transport of ozone pollution across state borders compounds the difficulty for downwind states in meeting health-based air quality standards (*i.e.,* NAAQS). Assessments of ozone, for example those conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007), continue to show the importance of $NO_X$ emissions for ozone transport. This analysis is in the docket for this proposal and can be also found at EPA's website at: *https://www.epa.gov/ttnecas1/docs/20151001ria.pdf*.

Further, studies have found that EGU $NO_X$ emission reductions can be effective in reducing individual 8-hour peak ozone concentrations and in reducing 8-hour peak ozone concentrations averaged across the ozone season. For example, a study that evaluates the effectiveness on ozone concentrations of EGU $NO_X$ reductions achieved under the $NO_X$ Budget Trading Program (*i.e.,* the $NO_X$ SIP Call) shows that regulating $NO_X$ emissions in that program was highly effective in reducing both ozone and dry-$NO_3$ concentrations during the ozone season. Further, this study indicates that EGU emissions, which are generally released higher in the air column through tall stacks and are significant in quantity, may disproportionately contribute to long-range transport of ozone pollution on a per-ton basis.[52]

Previous regional ozone transport efforts, including the $NO_X$ SIP Call, CAIR, and the CSAPR, required ozone season $NO_X$ reductions from EGUs to address interstate transport of ozone. EPA took comment on regulating EGU $NO_X$ emissions to address interstate ozone transport in the notice-and-comment process for these rulemakings. EPA received no significant adverse comments in any of these proposals regarding the rules' focus on ozone season EGU $NO_X$ reductions to address interstate ozone transport.

As described in Section VII, EPA's analysis finds that the power sector continues to be capable of making $NO_X$ reductions at reasonable cost that reduce interstate transport with respect to ground-level ozone. EGU $NO_X$ emission reductions can be made in the near-term under this proposal by fully operating existing EGU $NO_X$ post-combustion controls (*i.e.,* Selective Catalytic Reduction)—including optimizing $NO_X$ removal by existing operational controls and turning on and optimizing existing idled controls; installation of (or upgrading to) state-of-the-art $NO_X$ combustion controls; and shifting generation to units with lower $NO_X$ emission rates. Further, additional assessment reveals that these available EGU $NO_X$ reductions would make meaningful and timely improvements in ozone air quality.

EPA also observes that significant emissions reduction potential from EGUs is available through the post-combustion control retrofit strategies. These controls reduce emissions and can have a meaningful air quality impact, but, in contrast to the controls discussed above, they are not available in the near-term, and are only available on a longer time frame (reflecting the time required to develop, construct, and install the technology) and are estimated to have a higher cost.

3. Health and Environmental Effects

Exposure to ambient ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition. *See* EPA's November 2014 Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/P–14–006), in the docket for this proposal and available on EPA's website at: *http://www.epa.gov/ttn/ecas/regdata/RIAs/20141125ria.pdf*, for more information on the human health and welfare and ecosystem effects associated with ambient ozone exposure.

*B. Relationship Between This Regulatory Action and the 2015 Ozone NAAQS*

On October 1, 2015, EPA strengthened the ground-level ozone NAAQS to 70 ppb on an eight-hour averaging time, based on extensive scientific evidence about ozone's effects on public health and welfare.[53] While reductions achieved by this rule may have the effect of aiding in attainment and maintenance of the 2015 standard, this action is taken solely with respect to EPA's authority to address remaining CAA good neighbor obligations under the 2008 ozone NAAQS. EPA and states are working outside of this proposed action to address the CAA good

[49] 73 FR 16436 (Mar. 27, 2008).

[50] 40 CFR part 50, Appendix P to part 50.

[51] Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of $NO_X$ and $SO_2$ emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[52] Butler, et al., ''Response of Ozone and Nitrate to Stationary Source Reductions in the Eastern USA''. *Atmospheric Environment,* 2011.

[53] 80 FR 65291 (Oct. 26, 2015). On July 13, 2020, based on a review of the full body of currently available scientific evidence and exposure/risk information, EPA proposed to retain the existing ozone NAAQS. *See https://www.epa.gov/ground-level-ozone-pollution/ozone-national-ambient-air-quality-standards-naaqs.*

neighbor provision for the 2015 ozone NAAQS.

*C. Proposed Approach To Address the Remanded Transport Obligations for the 2008 Ozone NAAQS*

1. Events Affecting Application of the Good Neighbor Provision for the 2008 Ozone NAAQS

EPA is taking this action to address the remand of the CSAPR Update in *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019). This Section will discuss the key, relevant aspects of the CSAPR Update, the related CSAPR Close-Out, and the D.C. Circuit's decisions in *Wisconsin* and *New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019) (the latter of which vacated the Close-out Rule based on the same reasoning as the *Wisconsin* decision remanding the Update). The basis for EPA's authority under CAA section 110(c) (42 U.S.C. 7410(c)) to promulgate good neighbor FIPs for the 21 states subject to this action on remand is discussed in Sections IV and V.C.2.

a. The CSAPR Update

On October 26, 2016, the CSAPR Update was published in the **Federal Register**. 81 FR 74504. The purpose of the CSAPR Update was to address the good neighbor provision for the 2008 ozone NAAQS, as well as address remanded CSAPR obligations for the 1997 ozone NAAQS. The CSAPR Update required EGUs in 22 states to reduce ozone season $NO_X$ emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain the 2008 ozone NAAQS.

To establish and implement the CSAPR Update emissions budgets, EPA followed the same four-step analytic process that it used in the CSAPR, an approach which reflects the evolution of the Agency's prior regional interstate transport rulemakings related to ozone NAAQS. The 4-step framework is described in more detail in Sections V.C.3 and VII.A.

In the CSAPR Update, to evaluate the scope of the interstate ozone transport problem at Step 1, EPA identified downwind areas that were expected to have problems attaining and maintaining the 2008 ozone NAAQS using modeling that projected air quality to a future compliance year. 81 FR 74517. EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season (May 1–September 30) in order to assist downwind states with attainment of the 2008 ozone NAAQS by the 2018 Moderate area attainment date. *Id.* at 74516. (EPA's final 2008 Ozone NAAQS SIP Requirements Rule established the attainment deadline of July 20, 2018, for ozone nonattainment areas classified as Moderate.[54]) Because the attainment date fell during the 2018 ozone season, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by that date.

At Step 2, EPA identified upwind states that collectively contribute to these identified downwind areas. In the CSAPR Update, EPA used a screening threshold of 1 percent of the NAAQS to identify states ''linked'' to downwind ozone problems sufficient for further evaluation for significant contribution to nonattainment or interference with maintenance of the NAAQS under the good neighbor provision. 81 FR 74518. This same threshold for analysis was used in the CSAPR as to the 1997 ozone NAAQS. *See* 76 FR at 48237–38.

At Step 3, EPA quantified emissions from upwind states that would significantly contribute to nonattainment or interfere with maintenance by first evaluating various levels of uniform $NO_X$ control stringency, each represented by an estimated marginal cost per ton of $NO_X$ reduced. EPA then applied the same multi-factor test that was used in the CSAPR to evaluate cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform $NO_X$ control stringency that addressed the impacts of interstate transport on downwind nonattainment or maintenance receptors. EPA used this multi-factor assessment to gauge the extent to which emission reductions could be implemented in the future compliance year (*i.e.,* 2017) and to evaluate the potential for over- and under-control of upwind state emissions.

Within the multi-factor test, EPA identified a ''knee in the curve,'' *i.e.,* a point at which the cost-effectiveness of the emission reductions was maximized, so named for the discernable turning point observable in a multi-factor (*i.e.,* multi-variable) curve. *See* 81 FR 74550. EPA concluded that this was at the point where emissions budgets reflected a uniform $NO_X$ control stringency represented by an estimated marginal cost of $1,400 per ton (2011$) of $NO_X$ reduced. This cost threshold in turn represented a control strategy of installing or upgrading combustion controls and optimizing existing SCR controls. In light of this multi-factor test, EPA determined this level of stringency in emissions budgets represented the level at which incremental EGU $NO_X$ reduction potential and corresponding downwind ozone air quality improvements were maximized—relative to other control stringencies evaluated—with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost were maximized relative to the other levels of control stringency evaluated. EPA found that feasible and cost-effective EGU $NO_X$ reductions were available to make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS for the 2017 ozone season. *Id.* at 74508. Further, the Agency's evaluation showed that emissions budgets reflecting the $1,400 per ton cost threshold did not over-control upwind states' emissions relative to either the downwind air quality problems to which they were linked or the one percent contribution threshold in Step 2 that triggered their further evaluation in Step 3. *Id.* at 74551–52.

At Step 4, EPA finalized EGU ozone season $NO_X$ emissions budgets developed using uniform control stringency represented by $1,400 per ton. These budgets represented emissions remaining in each state after elimination of the amounts of emissions that EPA identified would significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. EPA promulgated FIPs requiring the covered power plants in the 22 covered states to participate in the CSAPR $NO_X$ Ozone Season Group 2 Trading Program starting in 2017.[55]

b. Partial Nature of the CSAPR Update

At the time it promulgated the CSAPR Update, EPA considered the FIPs to be ''partial'' and that the rule ''may not be sufficient to fully address these states' good neighbor obligations'' for the 2008 ozone NAAQS for 21 of the 22 states included in that rule. 81 FR 74508, 74521 (Oct. 26, 2016). Based on information available at the time of the rule's promulgation, EPA was unable to conclude that the CSAPR Update fully addressed most of the covered states'

[54] 80 FR 12264, 12268 (Mar. 6, 2015); *see* 40 CFR 51.1103.

[55] The $NO_X$ ozone season trading program created under the CSAPR was renamed the CSAPR $NO_X$ Ozone Season Group 1 Trading Program and now applies only to sources in Georgia. In the CSAPR Update, EPA found that Georgia did not contribute to interstate transport with respect to the 2008 ozone NAAQS, but the state has an ongoing ozone season $NO_X$ requirement under the CSAPR with respect to the 1997 ozone NAAQS.

good neighbor obligations for the 2008 ozone NAAQS. *Id.* at 74521. Information available at the time indicated that, even with the CSAPR Update implementation, several downwind receptors were expected to continue having problems attaining and maintaining this NAAQS and that emissions from upwind states were expected to continue to contribute greater than or equal to one percent of the NAAQS to these areas during the 2017 ozone season. *Id.* at 74551–52. Further, EPA could not conclude at that time whether additional EGU and non-EGU reductions implemented on a longer timeframe than 2017 would be necessary, feasible, and cost-effective to address states' good neighbor obligations for this NAAQS.

Additionally, EPA determined it was not feasible to complete an emissions control analysis that may otherwise have been necessary to evaluate full elimination of each state's significant contribution to nonattainment or interference with maintenance and also ensure that emission reductions already quantified in the rule would be achieved by 2017. *Id.* at 74522. EPA was unable to fully consider both non-EGU ozone season $NO_X$ reductions and further EGU reductions that may have been achievable after 2017. *Id.* at 74521. *See* Section V.D.3 below.

Thus, EPA also could not make an emissions reduction-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS because the reductions evaluated and required by the CSAPR Update were limited in scope (both by technology and sector). As a result of the remaining air quality problems and the limitations on EPA's analysis, for all but one of the 22 affected states, EPA did not determine in the CSAPR Update that the rule fully addressed those states' downwind air quality impacts under the good neighbor provision for the 2008 ozone NAAQS. *Id.* at 74521. For one state, Tennessee, EPA determined in the final CSAPR Update that Tennessee's emissions budget fully eliminated the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved with implementation of the CSAPR Update. *Id.* at 74552.

c. The CSAPR Close-Out

Following implementation of the CSAPR Update and the approval of Kentucky's SIP (under a court-ordered deadline),[56] on December 21, 2018, EPA issued the CSAPR ''Close-Out'' to address any good neighbor obligations that remained for the 2008 ozone NAAQS for the 20 remaining states in the CSAPR Update region. *See* 83 FR 65878 (Dec. 21, 2018). The CSAPR Close-Out made a determination that, based on additional information and analysis, the CSAPR Update fully addressed the remaining 20 affected states' good neighbor obligations for the 2008 ozone NAAQS. In particular, EPA determined that 2023 was an appropriate future analytic year considering relevant attainment dates and the time EPA estimated to be necessary to implement new $NO_X$ control technologies at EGUs. Based on EPA's analysis of projected air quality in that year, EPA determined that, for the purposes of addressing good neighbor obligations for the 2008 ozone NAAQS, there would be no remaining nonattainment or maintenance receptors in the eastern U.S. As a result of this determination, EPA found that, with continued implementation of the CSAPR Update, these 20 states would no longer contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. *Id.*

d. D.C. Circuit Decisions in Wisconsin v. EPA and New York v. EPA

The CSAPR Update was subject to petitions for judicial review, and the D.C. Circuit issued its opinion in *Wisconsin* v. *EPA* on September 13, 2019. 938 F.3d 303. The D.C. Circuit upheld the CSAPR Update in all respects save one: The court concluded that the CSAPR Update was inconsistent with the CAA to the extent that it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by the downwind states' 2018 Moderate attainment date. *Id.* at 313.

The court identified three bases for this holding: (1) The D.C. Circuit's prior opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (2008), which held, in the context of CAIR, that the good neighbor provision requires states to eliminate significant contribution ''consistent with the provisions'' of Title I of the CAA, including the attainment dates applicable in downwind areas, 938 F.3d at 314 (citing 531 F.3d at 912); (2) the unreasonableness of EPA's interpretation of the phrase ''consistent with the provisions [of Title I]'' in the good neighbor provision as allowing for variation from the attainment schedule in CAA section 181 because it would enable significant contribution from upwind states to continue beyond that statutory timeframe, 938 F.3d at 315–18; and (3) the court's finding that the practical obstacles EPA identified regarding why it needed more time to implement a full remedy did not rise to the level of an ''impossibility,'' *id.* at 318–20. With respect to the third basis, the court also found EPA must make a higher showing of uncertainty regarding non-EGU point-source $NO_X$ mitigation potential before declining to regulate such sources. *Id.* at 318–20.

However, the court identified flexibilities that EPA retains in administering the good neighbor provision, acknowledging that EPA has latitude in defining which upwind contribution ''amounts'' count as significant and thus must be abated, permitting EPA to consider, among other things, the magnitude of upwind states' contributions and the cost associated with eliminating them. 938 F.3d at 320. The court further noted that, in certain circumstances, EPA can grant extensions of the attainment deadlines under the Act; for instance, the court cited CAA section 181(a)(5), which allows EPA to grant one-year extensions from attainment dates under certain circumstances. *Id.* Finally, the court noted that EPA can attempt to show ''impossibility.'' *Id.* The court also recognized that the statutory command that compliance with the good neighbor provision must be achieved consistent with Title I might be read, upon a sufficient showing of necessity, to allow some deviation from downwind deadlines, so long as it is rooted in Title I's framework and provides a sufficient level of protection to downwind States. *Id.*

The court in *Wisconsin* remanded but did not vacate the CSAPR Update, finding that vacatur of the rule could cause harm to public health and the environment or disrupt the trading program EPA had established and that the obligations imposed by the rule may be appropriate and sustained on remand. *Id.* at 336. The court also rejected petitioners' request to place EPA on a six-month schedule to address the remand, noting the availability of ''mandamus'' relief before the D.C. Circuit should EPA fail to ''modify the rule in a manner consistent with our opinion.'' *Id.* at 336–37.

On October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds

[56] 83 FR 33730 (July 17, 2018) (approval of Kentucky's SIP for the 2008 ozone NAAQS). *See* section V.C.2.b. for discussion of our proposed action for Kentucky in this notice.

that it remanded the Update in *Wisconsin. New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019). Because the Close-Out analyzed the year 2023 rather than 2021 (''the next applicable attainment date'') and failed to demonstrate that it was impossible to address significant contribution by the 2021 attainment date, the court found the rule ran afoul of the *Wisconsin* holding. *Id.* at 7. ''As the EPA acknowledges, the Close-Out Rule 'relied upon the same statutory interpretation of the Good Neighbor Provision' that we rejected in *Wisconsin.* Thus, the Agency's defense of the Close-Out Rule in these cases is foreclosed.'' *Id.* at 6–7 (internal citation omitted). The court left open the possibility that the flexibilities identified in *Wisconsin,* 938 F.3d at 320, and outlined above, may be available to EPA on remand. *Id.*

Following *Wisconsin* and *New York,* EPA on remand must address good neighbor obligations for the 21 states within the CSAPR Update region for which the Update was only a partial remedy. As explained in the following section, EPA already retains FIP authority as to 20 of these states. In addition, EPA is proposing action pursuant to CAA section 110(k)(6) (42 U.S.C. 7410(k)(6)) to find that Kentucky's SIP was approved in error and is thus proposing a FIP for Kentucky consistent with the obligations proposed for the other remaining CSAPR Update region states.

2. FIP Authority for Each State Covered by the Proposed Rule

On March 12, 2008, EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 ppb. *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008). Specifically, the standards require that an area may not exceed 0.075 parts per million (75 ppb) using the 3-year average of the fourth highest 24-hour maximum 8-hour rolling average ozone concentration. These revisions of the NAAQS, in turn, triggered a 3-year deadline for states to submit SIP revisions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision. Several events affected the timely application of the good neighbor provision for the 2008 ozone NAAQS, including reconsideration of the 2008 ozone NAAQS and legal developments pertaining to the CSAPR, which created uncertainty surrounding EPA's statutory interpretation and implementation of the good neighbor provision.[57] Notwithstanding these events, EPA ultimately affirmed that states' good neighbor SIPs were due on March 12, 2011.

a. FIP Authority for CSAPR Update States

EPA subsequently took several actions that triggered EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for several states.[58] First, on July 13, 2015, EPA published a rule finding that 24 states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (effective August 12, 2015). This finding triggered a two-year deadline for EPA to issue FIPs to address the good neighbor provision for these states by August 12, 2017. The CSAPR Update finalized FIPs for 13 of these states (Alabama, Arkansas, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia), requiring their participation in a $NO_X$ trading program. EPA also determined in the CSAPR Update that the Agency had no further FIP obligation as to nine additional states identified in the finding of failure to submit because these states did not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. *See* 81 FR 74506.[59] [60] On June 15, 2016, and July 20, 2016, EPA published additional rules finding that Maryland and New Jersey, respectively, also failed to submit transport SIPs for the 2008 ozone NAAQS. *See* 81 FR 38963 (June 15, 2016) (New Jersey, effective July 15, 2016); 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016). The finding actions triggered two-year deadlines for EPA to issue FIPs to address the good neighbor provision for Maryland by August 19, 2018, and for New Jersey by July 15, 2018. The CSAPR Update also finalized FIPs for these two states.

In addition to these findings, EPA finalized disapproval or partial disapproval actions for good neighbor SIPs submitted by Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.[61] These disapprovals triggered EPA's obligation to promulgate FIPs to implement the requirements of the good neighbor provision for those states within two years of the effective date of each disapproval or, in the case of Kentucky, within two years of the issuance of the judgment in a subsequent Supreme Court decision.[62] EPA promulgated FIPs in the CSAPR Update for each of these states.

As discussed in more detail above in section V.C.1, in issuing the CSAPR Update, EPA did not determine that it had entirely addressed EPA's outstanding CAA obligations to implement the good neighbor provision with respect to the 2008 ozone NAAQS for 21 of 22 states covered by that rule. Accordingly, the CSAPR Update did not fully satisfy EPA's obligation under CAA section 110(c) to address the good neighbor provision requirements for those states by approving SIPs, issuing FIPs, or some combination of those two actions. EPA found that the CSAPR Update FIPs fully addressed the good neighbor provision for the 2008 ozone NAAQS only with respect to Tennessee.

[57] These events are described in detail in section IV.A.2 of the CSAPR Update. *See* 81 FR 74515.

[58] This section of the preamble focuses on SIP and FIP actions for those states addressed in the CSAPR Update. EPA has also acted on SIPs for other states not mentioned in this action. The memorandum, ''Proposed Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' more fully describes the good neighbor SIP status for the 2008 ozone NAAQS and is available in the docket for this proposal.

[59] The nine states were Florida, Georgia, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont. These determinations were not challenged in *Wisconsin,* and EPA is not reopening these determinations in this proposal.

[60] The two remaining states addressed in the findings of failure to submit (California and New Mexico) were not part of the CSAPR Update or the CSAPR Close-Out analysis and are not addressed in this proposal.

[61] *See* the following actions: Indiana (81 FR 38957, June 15, 2016); Kentucky (78 FR 14681, March 7, 2013); Louisiana (81 FR 53308, August 12, 2016); New York (81 FR 58849, August 26, 2016); Ohio (81 FR 38957, June 15, 2016); Texas (81 FR 53284, August 12, 2016); and Wisconsin (81 FR 53309, August 12, 2016).

[62] In the 2013 disapproval action for Kentucky, EPA stated that it had no mandatory duty to issue a FIP because of the D.C. Circuit's holding in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), that EPA cannot impose good neighbor FIPs without first quantifying states' obligations. *See* 78 FR 14681. In 2014, the Supreme Court reversed the D.C. Circuit's holding. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509–10 (2014). In light of the Supreme Court's decision, on review of our 2013 disapproval action for Kentucky in the Sixth Circuit, EPA requested, and the court granted, a vacatur and remand of the portion of EPA's final action that determined that a FIP obligation was not triggered. *See* Order, *Sierra Club* v. *EPA,* No. 13–3546, ECF No. 74–1 (6th Cir. Mar. 13, 2015). On remand, EPA determined that its FIP obligation as to Kentucky was triggered as of June 2, 2014, the date of issuance of the Supreme Court's judgment. *See* 81 FR 74513.

b. Correction of EPA's Determination Regarding Kentucky's SIP Revision and Its Impact on EPA's FIP Authority for Kentucky

After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, EPA approved a SIP from Kentucky resolving that state's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). The action was separate from the CSAPR Close-Out because it was taken in response to a May 23, 2017 order from the U.S. District Court for the Northern District of California requiring EPA to take a final action fully addressing the good neighbor obligation for the 2008 ozone NAAQS for Kentucky by June 30, 2018.[63] EPA was obligated to address the outstanding obligation by either approving a SIP submitted by Kentucky or promulgating a FIP to address any remaining obligation.[64]

On May 10, 2018, Kentucky submitted a final SIP to EPA, on which the Agency finalized approval consistent with the court-ordered deadline. *See* 83 FR 33730. The Kentucky SIP revision that EPA approved relied on the reductions from the CSAPR Update FIP for Kentucky and provided a technical analysis, including emission projections and air quality modeling for 2023, showing that with the CSAPR Update level of reductions, the receptors to which Kentucky was linked were attaining and maintaining the 2008 ozone NAAQS in 2023. This allowed EPA to conclude that Kentucky did not have any further obligation for the 2008 ozone NAAQS, and EPA approved the SIP revision. Thus, the approval relied on the same rationale and technical analysis that was eventually used for the other CSAPR Update FIP states in the CSAPR Close-Out. EPA's approval stated:

''no additional emission reductions are necessary to address the good neighbor provision for the 2008 ozone NAAQS beyond those required by the Cross-State Air Pollution Rule Update (CSAPR Update) federal implementation plan (FIP). Accordingly, EPA is approving Kentucky's submission because it partially addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS, and it resolves any obligation remaining under the good neighbor provision after promulgation of the CSAPR Update FIP. The approval of Kentucky's SIP submission and the CSAPR Update FIP, together, fully address the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky.''

83 FR 33730.

Subsequent to EPA's approval of the Kentucky SIP, EPA issued the CSAPR Close-Out, which concluded that, based on essentially the same analysis used for Kentucky, none of the other 20 CSAPR Update states had further good neighbor obligations to address the 2008 8-hour ozone NAAQS. In the Fall of 2019, the D.C. Circuit issued the *Wisconsin* and *New York* decisions remanding the CSAPR Update Rule and vacating the CSAPR Close-Out (see Section V.C.1.d.).

Kentucky's CSAPR Update FIP, which Kentucky relied on in its SIP revision, is part of the CSAPR Update remand, and EPA must address it in this action. Further, the D.C. Circuit's review of the CSAPR Close-Out found fault with, and vacated, the same rationale that EPA had used to approve Kentucky's SIP in June 2018.

Therefore, in light of the remand of Kentucky's CSAPR Update FIP in *Wisconsin* and vacatur of the CSAPR Close-Out in *New York,* EPA is proposing to determine in this action that its approval of Kentucky's SIP as fully resolving the state's 2008 ozone NAAQS good neighbor obligations was in error. Section 110(k)(6) of the CAA (42 U.S.C. 7410(k)(6)) gives the Administrator authority, without any further submission from a state, to revise certain prior actions, including actions to approve SIPs, upon determining that those actions were in error. The court's remand of the partial FIP for Kentucky in *Wisconsin* and the vacatur of EPA's conclusions for states identically situated to Kentucky in the CSAPR Close-Out means that EPA's approval of Kentucky's SIP was in error. EPA is compelled on remand to act consistently with the court's opinion and has reassessed Kentucky's good neighbor obligations under the 2008 ozone NAAQS here. In doing so, EPA's proposed analysis identifies an additional emission reduction obligation for Kentucky. Therefore, EPA is proposing to correct the error in Kentucky's SIP approval through this notice and comment rulemaking, as allowed by the CAA when a prior SIP approval was in error. The proposed error correction under CAA section 110(k)(6) would revise the approval of Kentucky's SIP to a disapproval and rescind any statements that the SIP submission fully addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky. The Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out, because it only addressed conditions in 2023 without a showing of impossibility regarding the next attainment date in 2021. Kentucky's remanded partial FIP has been reassessed in this action, consistent with EPA's methodology to address the other 20 states with remanded CSAPR Update FIPs, and consistent with the D.C. Circuit's direction in *Wisconsin* and *New York.* As discussed in greater detail in the sections that follow, EPA proposes to determine that there are additional emission reductions that are required for Kentucky to fully satisfy its good neighbor obligation for the 2008 ozone NAAQS. The analysis on which EPA proposes this conclusion for Kentucky is the same, regionally consistent analytical framework on which the Agency proposes action for all of the other CSAPR Update states with remanded FIPs. The Agency recognizes that it is possible, based on updated information for the final rule—as applied within a regionally consistent analytical framework—that Kentucky (or other states for which EPA proposes revised FIPs in this action) may be found to have no further interstate transport obligation for the 2008 ozone NAAQS. If such a circumstance were to occur, EPA anticipates that it would not finalize this proposed error correction or may modify the error correction such that our July 2018 approval of Kentucky's SIP may be affirmed.

c. CSAPR Update SIP Revisions That Do Not Affect FIP Authority

Subsequent to the promulgation of the CSAPR Update, EPA approved SIPs fully replacing the CSAPR Update FIPs for Alabama, Indiana, and Missouri.[65] In those SIP approvals and consistent with the conclusions of the CSAPR Update, EPA found that the SIPs partially satisfy Alabama's, Indiana's, and Missouri's good neighbor obligations for the 2008 ozone NAAQS. Thus, EPA continues to have an obligation to fully address good neighbor requirements for the 2008 ozone NAAQS with respect to Alabama and Missouri, stemming from the July 13, 2015, findings of failure to submit, and Indiana, due to the June 15, 2016, disapproval of the state's good neighbor SIP. *See* 80 FR 39961; 81 FR 38957. Other states have also submitted 2008 ozone NAAQS good neighbor SIPs or

[63] *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. May 23, 2017).

[64] The obligation ultimately derives from EPA's 2013 action disapproving Kentucky's SIP addressing the 2008 ozone NAAQS on the basis that Kentucky relied on the CAIR program for the 2008 ozone NAAQS good neighbor obligation. However, as previously discussed, the trigger for the timing of the obligation was the 2014 issuance of the Supreme Court's judgment in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014). *See supra* note 62.

[65] 82 FR 46674 (Oct. 6, 2017) (Alabama); 83 FR 64472 (Dec. 17, 2018) (Indiana); 84 FR 66316 (Dec. 4, 2019) (Missouri).

SIPs to replace their CSAPR FIPs, some of which EPA has approved and some of which still remain pending. Because these circumstances do not affect the scope or basis for this rulemaking, these actions are not described in detail in this section.

d. Summary of Authority for FIPs for This Action

Table V.C–1 summarizes the statutory deadline for EPA to address its FIP obligation under CAA section 110(c) and the event that activated EPA's obligation for each of the 21 CSAPR Update states that are the subject of this final action. For more information regarding the actions triggering EPA's FIP obligation and EPA's action on SIPs addressing the good neighbor provision for the 2008 ozone NAAQS, see the memorandum, ''Proposed Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' in the docket for this action.

TABLE V.C–1—ACTIONS THAT ACTIVATED EPA'S STATUTORY FIP DEADLINES

| State | Type of action (**Federal Register** citation, publication date) | Statutory FIP deadline † |
|---|---|---|
| Alabama | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Arkansas | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Illinois | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Indiana | SIP disapproval (81 FR 38957, 6/15/2016) | 7/15/2018 |
| Iowa | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Kansas | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Kentucky | SIP disapproval (78 FR 14681, 3/7/2013) | 6/2/2016 |
| Louisiana | SIP disapproval (81 FR 53308, 8/12/2016) | 9/12/2018 |
| Maryland | Finding of Failure to Submit (81 FR 47040, 7/20/2016) | 8/19/2018 |
| Michigan | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Mississippi | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Missouri | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| New Jersey | Finding of Failure to Submit (81 FR 38963, 6/15/2016) | 7/15/2018 |
| New York | SIP disapproval (81 FR 58849, 8/26/2016) | 9/26/2018 |
| Ohio | SIP disapproval (81 FR 38957, 6/15/2016) | 7/15/2018 |
| Oklahoma | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Pennsylvania | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Texas | SIP disapproval (81 FR 53284, 8/12/2016) | 9/12/2018 |
| Virginia | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| West Virginia | Finding of Failure to Submit (80 FR 39961, 7/13/2015) | 8/12/2017 |
| Wisconsin | Partial SIP disapproval as to prong 2 (81 FR 53309, 8/12/2016) | 9/12/2018 |

† For states other than Kentucky, the FIP deadline is two years from the effective date of the SIP disapproval or Finding of Failure to Submit, which generally trails the publication date by 30 days. For Kentucky, the FIP deadline is two years after the issuance of the Supreme Court's judgment in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014). *See supra* note 62.

3. The 4-Step Good Neighbor Framework

The CSAPR and the subsequent CSAPR Update, building on EPA's prior methodologies in the $NO_X$ SIP Call and CAIR, established a 4-step process to address the requirements of the good neighbor provision.[66] In this proposed action to address the remand of the CSAPR Update, EPA follows the same steps. These steps are: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emissions reductions through enforceable measures.

Step 1—In the CSAPR, downwind air quality problems were assessed using modeled future air quality concentrations for a year aligned with attainment deadlines for the NAAQS considered in that rulemaking. The assessment of future air quality conditions generally accounts for on-the-books emission reductions and the most up-to-date forecast of future emissions in the absence of the transport policy being evaluated (*i.e.,* base case conditions). The locations of downwind air quality problems are identified as those with receptors that are projected to be unable to attain (*i.e.,* nonattainment receptor) or maintain (*i.e.,* maintenance receptor) the NAAQS. In the CSAPR Update, EPA also considered current monitored air quality data to further inform the projected identification of downwind air quality problems. These same considerations are included for this proposal. EPA is not reopening the definition of nonattainment and maintenance receptors promulgated in the CSAPR Update. Further details and application of Step 1 for this proposal are described in section VI.

Step 2—The CSAPR and the CSAPR Update used a screening threshold of 1 percent of the NAAQS to identify upwind states that were ''linked'' to downwind air pollution problems. States with contributions greater than or equal to the threshold for at least one downwind problem receptor (*i.e.,* nonattainment or maintenance receptor identified in Step 1) were identified as needing further evaluation for actions to address transport if their air quality was impacted.[67] EPA evaluated a given state's contribution based on the average relative downwind impact calculated over multiple days.[68] States whose air

[66] *See* CSAPR, Final Rule, 76 FR 48208, 48248–48249 (Aug. 8, 2011); CSAPR Update, Final Rule, 81 FR 74504, 74517–74521 (Oct. 26, 2016).

[67] For ozone the impacts would include those from (VOC) and $NO_X$, and from all sectors.

[68] The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year

Continued

quality impacts to all downwind problem receptors were below this threshold did not require further evaluation for actions to address transport—that is, these states were determined to not contribute to downwind air quality problems and therefore had no emission reduction obligations under the good neighbor provision. EPA has used this threshold because a notable portion of the transport problem in the eastern half of the United States can result from relatively small contributions from a number of upwind states. Use of the 1 percent threshold for the CSAPR is discussed in the preambles to the proposed and final CSAPR rules. *See* 75 FR 45237 (Aug. 2, 2010); 76 FR 48238 (Aug. 8, 2011). The same metric is discussed in the CSAPR Update Rule. *See* 81 FR 74538. While EPA has updated its air quality data for determining contributions, the Agency is not reopening the use of the 1 percent threshold in this action to address the remand of the CSAPR Update. Application of Step 2 for this proposal is described in section VI.

Step 3—For states that are linked in Step 2 to downwind air quality problems, the CSAPR and the CSAPR Update evaluated $NO_X$ reductions that were available in upwind states by applying a uniform control technology (represented by a marginal cost of $NO_X$ emissions) to entities in these states. EPA evaluated $NO_X$ reduction potential, cost, and downwind air quality improvements available at several cost thresholds in the multi-factor test. In both the CSAPR and the CSAPR Update, EPA selected the cost-threshold that maximized cost-effectiveness (of the cost thresholds examined), that is, the level of stringency in emission budgets at which incremental $NO_X$ reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to marginal cost relative to the other emission budget levels evaluated. *See, e.g.,* 81 FR 74550. This evaluation quantified the magnitude of emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS downwind and apportioned upwind responsibility among linked states, an approach upheld by the U.S. Supreme Court in *EPA* v. *EME Homer City.*[69] In general, EPA proposes in this action to apply this approach to identify $NO_X$ emission reductions necessary to address significant contribution for the 2008 ozone NAAQS.

In *EME Homer City,* the Supreme Court held that ''EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set.'' 572 U.S. at 521. The Court acknowledged that ''instances of 'over-control' in particular downwind locations may be incidental to reductions necessary to ensure attainment elsewhere.'' *Id.* at 492.

> ''Because individual upwind States often 'contribute significantly' to nonattainment in multiple downwind locations, the emissions reductions required to bring one linked downwind State into attainment may well be large enough to push other linked downwind States over the attainment line. As the Good Neighbor Provision seeks attainment in *every* downwind State, however, exceeding attainment in one State cannot rank as 'over-control' unless unnecessary to achieving attainment in *any* downwind State. Only reductions unnecessary to downwind attainment *anywhere* fall outside the Agency's statutory authority.''

*Id.* at 522 (footnotes excluded).

The Court further explained that ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' *Id.* at 523. Therefore, in the CSAPR Update, EPA evaluated possible over-control by considering whether an upwind state is linked solely to downwind air quality problems that can be resolved at a lower cost threshold, or if upwind states would reduce their emissions at a lower cost threshold to the extent that they would no longer meet or exceed the 1 percent air quality contribution threshold. *See* 81 FR at 74551–52. This evaluation of cost, $NO_X$ reductions, and air quality improvements, including consideration of potential over-control, results in EPA's determination of upwind emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind and should therefore be eliminated. This allows EPA to then determine an enforceable emissions limit (often embodied in the form of an emissions budget) for the covered sources. Emissions budgets are the remaining allowable emissions after the elimination of emissions identified as significantly contributing to nonattainment or interfering with maintenance of the standard downwind.

In both the CSAPR and the CSAPR Update, EPA focused its Step 3 analysis on EGUs. In the CSAPR Update, EPA did not quantify non-EGU stationary source emissions reductions to address interstate ozone transport for the 2008 ozone NAAQS for two reasons. First, EPA explained that there was greater uncertainty in EPA's assessment of non-EGU $NO_X$ mitigation potential, and that more time would be required for states and EPA to improve non-EGU point source data and pollution control assumptions before it could develop emission reduction obligations based on that data. *See* 81 FR 74542. Second, EPA explained that it did not believe that significant, certain, and meaningful non-EGU $NO_X$ reduction was in fact feasible for the 2017 ozone season. *Id.* In *Wisconsin,* the D.C. Circuit found that the practical obstacles EPA identified with respect to its evaluation of non-EGUs did not rise to the level of an ''impossibility,'' 938 F.3d at 318–20. The court also found that EPA must make a higher showing of uncertainty regarding non-EGU point-source $NO_X$ mitigation potential before declining to regulate such sources on such a basis, *id.* Therefore, as discussed in more detail in Section VII, in this proposed action on remand from *Wisconsin,* EPA has included all major stationary source sectors in the linked upwind states in its ''significant contribution'' analysis at Step 3 of the 4-step framework.

Step 4—CSAPR and the CSAPR Update established interstate trading programs to implement the necessary emission reductions. Each state subject to the program is assigned an emissions budget for the covered sources. Emissions allowances are allocated to units covered by the trading program, and the covered units then surrender allowances after the close of each control period in an amount equal to their ozone season EGU $NO_X$ emissions.

EPA's trading programs under the good neighbor provision allow for interstate trading. However, in order to ensure that each state achieves reductions proportional to the level of their significant contribution, beginning with the CSAPR, EPA established ''assurance levels'' set as percentage of each state's budget (*e.g.,* 121 percent) above which emissions from sources in that state become subject to a higher ''penalty'' surrender ratio. These assurance levels are designed to allow for a certain level of year-to-year

design values (*https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf*). In 2014 EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (*https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf*). For CSAPR Update we transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, we are calculating both the ozone design values and the contributions based on a top-10 day approach (*https://www3.epa.gov/ttn/scram/guidance/guide/O3–PM–RH-Modeling_Guidance-2018.pdf*).

[69] *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014).

variability within power sector emissions to account for fluctuations in demand and EGU operations. The levels are therefore set by determining a ''variability limit,'' calculated based on an analysis of the historical level of variability in EGU operations.

Thus, both the CSAPR and the CSAPR Update set assurance levels equal to the sum of each state's emissions budget plus its variability limit. The CSAPR and the CSAPR Update included assurance provisions to limit state emissions to levels below 121 percent of the state's budget by requiring additional allowance surrenders in the instance that emissions in the state exceed this level. This limit on the degree to which a state's emissions can exceed its budget is responsive to previous court decisions (see discussion in section VIII.C.2 of this preamble) and was not part of the CSAPR Update aspects remanded to EPA in *Wisconsin.* EPA proposes to apply the same variability limits and assurance provisions in this rulemaking.[70] Implementation using a CSAPR trading program is further described in section VIII of this notice.

## VI. Analyzing Downwind Air Quality and Upwind-State Contributions

In this section, EPA describes the air quality modeling and analyses performed to identify nonattainment and/or maintenance receptors and evaluate interstate contributions to these receptors from individual upwind states for the 2021 analytic year. Although the air quality modeling was performed using an air quality modeling platform that covers the contiguous 48 states, the analysis to identify receptors and evaluate contributions focuses on the 21 upwind states that are the subject of this rule.

The year 2021 was selected as the appropriate future analytic year for this rule because it coincides with the July 20, 2021, Serious area attainment date under the 2008 ozone NAAQS. In the CSAPR Update, EPA had aligned its analysis and implementation of emission reductions with the 2017 ozone season (ozone seasons run each year from May 1–September 30) in order to assist downwind states with timely attainment of the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018. *See* 81 FR 74516. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season. Similarly, for the Serious area attainment date in 2021, states will rely on design values calculated using ozone season data from 2018 through 2020. However, it is not possible to impose emission reductions on upwind states in the 2020 ozone season, which has already passed. Reductions in the 2021 ozone season will nonetheless occur in time for the 2021 attainment date and therefore assist downwind states in achieving attainment by the July 20, 2021 attainment date, in compliance with the *Wisconsin* holding. *See Wisconsin,* 938 F.3d at 309 (the CSAPR Update is unlawful to the extent it allowed upwind states to ''continue their significant contributions to downwind air quality problems *beyond the statutory deadlines* by which downwind States must demonstrate their attainment of air quality standards'') (emphasis added). Further, EPA continues to interpret the good neighbor provision as forward-looking, based on Congress's use of the future-tense ''will'' in section 110(a)(2)(D)(i), an interpretation upheld in *Wisconsin,* 938 F.3d at 322. It would be ''anomalous,'' *id.,* for EPA to impose good neighbor obligations in 2021 and future years based solely on finding that ''significant contribution'' had existed at some time in the past.

EPA has also conducted additional analysis of remaining air quality receptors and contribution in years beyond 2021, in order to ensure a complete Step 3 analysis. EPA has analyzed these later years to determine whether any additional emission reductions that are impossible to obtain by the 2021 attainment date may yet be necessary in order to fully address significant contribution. This comports with the D.C. Circuit's direction in *Wisconsin* that implementing good neighbor obligations beyond the dates established for attainment may be justified on a proper showing of impossibility and/or necessity. *See* 938 F.3d at 320. However, for purposes of EPA's initial analysis of air quality at Step 1 of the 4-step framework, in accordance with *Wisconsin,* EPA has selected the 2021 ozone season, corresponding with the 2021 Serious area attainment date.

The remainder of this section includes information on (1) the air quality modeling platform used in support of the proposed rule with a focus on the base year and future year base case emission inventories, (2) the method for projecting design values in 2021, and (3) the approach for calculating ozone contributions from upwind states.[71] The Agency also provides the design values for nonattainment and maintenance receptors and the predicted interstate contributions that are at or above the one percent of the NAAQS screening threshold. The 2016 base period and 2021, 2023, and 2028 future design values and contributions for all ozone monitoring sites are provided in the docket for this proposed rule. The Air Quality Modeling Technical Support Document (AQM TSD) in the docket for this proposed rule contains more detailed information on the air quality modeling aspects of this rule.

### *A. Overview of Air Quality Modeling Platform*

EPA used the 2016-based modeling platform for the air quality modeling for this proposed rule. This modeling platform includes 2016 base year emissions from anthropogenic and natural sources and 2016 meteorology. The platform also includes anthropogenic emission projections for 2023 and 2028. The emissions data contained in this platform were developed by EPA, Multi-Jurisdictional Organizations (MJOs), and state and local air agencies as part of the Emissions Inventory Collaborative Process. This process resulted in a common-use set of emissions data for a 2016 base year and 2023 and 2028 that can be leveraged by EPA and states for regulatory air quality modeling.[72] The air quality modeling was performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 states using a horizontal resolution of 12 x 12 km. EPA used the CAMx version 7beta6 for air quality modeling since this was the most recent version of CAMx available at the time the air quality modeling was performed.[73] Additional information on the 2016-based air quality modeling platform can be found in the AQM TSD.

### *B. Emissions Inventories*

EPA developed emission inventories for this proposal, including emission estimates for EGUs, non-EGU point sources, stationary nonpoint sources,

[70] Historical heat input and $NO_X$ emissions in states covered by the CSAPR programs may be found in the ''Historical CSAPR Update Emissions and Heat Input 2000 to 2019.xlsx'' file.

[71] For the 2023 and 2028 modeling used in the Step 3 analysis, EPA followed the same method for projecting design values and approach for calculating contributions as described for the 2021 analytic year.

[72] *http://views.cira.colostate.edu/wiki/wiki/9169.*

[73] Ramboll Environment and Health, May 2020, *www.camx.com.* Note that CAMx v7beta6 is a pre-lease of version 7 that EPA used because the official release of version 7 did not occur until May 2020, which was too late for use in the air quality modeling for this proposal.

onroad mobile sources, nonroad mobile sources, wildfires, prescribed fires, and biogenic emissions that are not the result of human activities. EPA's air quality modeling relies on this comprehensive set of emission inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

To prepare the emission inventories for air quality modeling, EPA processed the emission inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 4.7 to produce the gridded, hourly, speciated, model-ready emissions for input to the air quality model. Additional information on the development of the emission inventories and on data sets used during the emissions modeling process are provided in the Technical Support Document (TSD) ''Preparation of Emissions Inventories for the 2016v1 North American Emissions Modeling Platform,'' hereafter known as the ''Emissions Modeling TSD.'' This TSD is available in the docket for this rule and at *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

1. Foundation Emission Inventory Data Sets

Emissions data were developed that represented the year 2016 to support air quality modeling of a base year from which future air quality could be forecasted. As noted above, EPA used the Inventory Collaborative 2016 version 1 (2016v1) Emissions Modeling Platform, released in October 2019, as the primary basis for the inventories supporting the air quality modeling. This platform was developed through a national collaborative effort between EPA and state and local agencies along with MJOs. The original starting point for the U.S. portions of the 2016 inventory was the 2014 National Emissions Inventory (NEI), version 2 (2014NEIv2), although all of the inventory sectors were updated to better represent the year 2016 through the incorporation of 2016-specific state and local data along with nationally applied adjustment methods. The future base case inventories developed for 2023 and 2028 represent projected changes in activity data and predicted emission reductions from on-the-books actions, planned emission control installations, and promulgated federal measures that affect anthropogenic emissions.[74]

2. Development of Emission Inventories for EGUs

Annual $NO_X$ and $SO_2$ emissions for EGUs in the 2016 base year inventory are based primarily on data from continuous emission monitoring systems (CEMS) and other monitoring systems allowed for use by qualifying units under 40 CFR part 75, with other EGU pollutants estimated using emission factors and annual heat input data reported to EPA. For EGUs not reporting under part 75, EPA used the most recent data submitted to the NEI by the states. Emissions data for sources that did not have data provided for the year 2016 were pulled forward from data submitted for 2014. The Air Emissions Reporting Rule, (80 FR 8787; February 19, 2015), requires that Type A point sources large enough to meet or exceed specific thresholds for emissions be reported to EPA every year, while the smaller Type B point sources must only be reported to EPA every three years. For more information on how the 2016 EGU emissions data were developed and prepared for air quality modeling, see the Emissions Modeling TSD.

EPA projected future 2023 and 2028 baseline EGU emissions using the version 6—January 2020 reference case of the Integrated Planning Model (IPM).[75] [76] IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emission control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. EPA has used IPM for over two decades to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.[77]

The IPM version 6—January 2020 reference base case accounts for updated federal and state environmental regulations, committed EGU retirements and new builds, and technology cost and performance assumptions as of late 2019. This projected base case accounts for the effects of the finalized Mercury and Air Toxics Standards rule, the CSAPR and the CSAPR Update, New Source Review settlements, and other on-the-books federal and state rules through 2019[78] impacting $SO_2$, $NO_X$, directly emitted particulate matter, and $CO_2$, and final actions EPA has taken to implement the Regional Haze Rule.

Additional 2021 EGU emissions baseline levels were developed through engineering analytics as an alternative approach that did not involve IPM. EPA developed this inventory for use in Step 3 of this proposed rulemaking, where it determines emission reduction potential and corresponding emission budgets. IPM includes optimization and perfect foresight in solving for least cost dispatch. Given that the final rule will likely become effective either immediately prior to or slightly after the start of the 2021 ozone season, EPA adopted a similar approach to the CSAPR Update where it relied on IPM in a relative way in Step 3 to avoid overstating optimization and dispatch decisions that were not possible in the short time frame. EPA does this by using the difference in emission rate observed between IPM runs with and without the cost threshold applied, rather than using absolute values. In both the CSAPR Update and in this rule at Step 3, EPA complemented that projected IPM EGU outlook with historical (*e.g.,* engineering analytics) perspective based on historical data that only factors in known changes to the fleet. This 2021 engineering analytics data set is described in more detail in the Ozone Transport Policy Analysis TSD.

3. Development of Emission Inventories for non-EGU Point Sources

The non-EGU point source emissions in the 2016 base case inventory match those in the 2016v1 platform. Some non-EGU point source emissions were based on data submitted for 2016, others were projected from 2014 to 2016, and

[74] Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2016 and the future years because (1) these emissions are tied to the 2016 meteorological conditions and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

[75] *https://www.epa.gov/powersectormodeling.*

[76] The 2016v1 platform released in October 2019 used the May 2019 reference case. The January 2020 IPM reference case is a later version than what was released with 2016v1.

[77] Detailed information and documentation of EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on EPA's website at: *www.epa.gov/airmarkets/powersectormodeling.*

[78] For any specific version of IPM there is a cutoff date after which it is no longer possible to incorporate updates into the input databases. For version 6—January reference case, that cutoff date was November 2019.

the emissions for remaining small sources were kept at 2014 levels. Prior to air quality modeling, the emission inventories were processed into a format that is appropriate for the air quality model to use. Projection factors and percent reductions in this proposal reflect comments received as a result of the Inventory Collaborative development process, along with emission reductions due to national and local rules, control programs, plant closures, consent decrees, and settlements. Reductions from several Maximum Achievable Control Technology and National Emission Standards for Hazardous Air Pollutants (NESHAP) standards are included. Projection approaches for corn ethanol and biodiesel plants, refineries and upstream impacts represent requirements pursuant to the Energy Independence and Security Act of 2007 (EISA). Details on the development and processing of the non-EGU emissions inventories for 2016, 2023, and 2028 are available in the Emissions Modeling TSD.

For aircraft emissions at airports, the emissions used were based on adjustments to emissions in the 2017 NEI (see *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data* for data and a TSD). EPA developed and applied factors to adjust the 2017 emissions to 2016, 2023, and 2028 based on activity growth projected by the Federal Aviation Administration Terminal Area Forecast system, published in 2018.

Emissions at rail yards were represented as non-EGU point sources. The 2016 rail yard emissions are largely consistent with the 2017 NEI rail yard emissions. The 2016, 2023, and 2028 rail yard emissions were developed through the Inventory Collaborative process. The rail yard emissions were interpolated from the 2016 and 2023 emissions. Class I rail yard emissions were projected using the Energy Information Administration's 2019 AEO freight rail energy use growth rate projections for 2016, 2023, and 2028 with the fleet mix assumed to be constant throughout the period.

Point source oil and gas emissions for 2016 were based on the 2016v1 point inventory, while nonpoint oil and gas emissions were primarily based on a run of EPA Oil and Gas Tool for the year 2016. The 2016 oil and gas inventories were projected to 2023 and 2028 using regional projection factors by product type based on Annual Energy Outlook (AEO) 2018 projections. $NO_X$ and VOC reductions that are co-benefits to the NESHAP and New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected for select source categories. In addition, Natural Gas Turbines and Process Heaters NSPS $NO_X$ controls and NSPS Oil and Gas VOC controls are reflected for select source categories. Additional information on the development and modeling of the oil and gas emission inventories can be found in the Emissions Modeling TSD.

4. Development of Emission Inventories for Onroad Mobile Sources

Onroad mobile sources include exhaust, evaporative, and brake and tire wear emissions from vehicles that drive on roads, parked vehicles, and vehicle refueling. Emissions from vehicles using regular gasoline, high ethanol gasoline, diesel fuel, and electric vehicles were represented, along with buses that used compressed natural gas. EPA developed the onroad mobile source emissions for states other than California using EPA's Motor Vehicle Emissions Simulator (MOVES) 2014b. MOVES2014b was used with inputs provided by state and local agencies, where available, in combination with nationally available data sets. Onroad emissions for the platform were developed based on emissions factors output from MOVES2014b run for the year 2016, coupled with activity data (*e.g.,* vehicle miles traveled and vehicle populations) representing the year 2016. The 2016 activity data were provided by some state and local agencies, and the remaining activity data were derived from the 2014NEIv2. The onroad emissions were computed within SMOKE by multiplying emission factors developed using MOVES with the appropriate activity data. Onroad mobile source emissions for California were consistent with the emissions provided by the state.

The future-year emissions for onroad mobile sources represent all national control programs known at the time of modeling except for the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 [79] and the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule.[80] Finalized rules incorporated into the onroad mobile source emissions include: Tier 3 Standards (March 2014), the Light-Duty Greenhouse Gas Rule (March 2013), Heavy (and Medium)-Duty Greenhouse Gas Rule (August 2011), the Renewable Fuel Standard (February 2010), the Light Duty Greenhouse Gas Rule (April 2010), the Corporate-Average Fuel Economy standards for 2008–2011 (April 2010), the 2007 Onroad Heavy-Duty Rule (February 2009), and the Final Mobile Source Air Toxics Rule (MSAT2) (February 2007). Estimates of the impacts of rules that were in effect in 2016 are included in the 2016 base year emissions at a level that corresponds to the extent to which each rule had penetrated into the fleet and fuel supply by the year 2016. Local control programs such as the California LEV III program are included in the onroad mobile source emissions. The future year onroad emissions reflect projected changes to fuel properties and usage. MOVES was run for the years 2023 and 2028 to generate the emissions factors relevant to those years. Future year activity data for onroad mobile sources were provided by some state and local agencies, and otherwise were projected to 2023 and 2028 using AEO 2019-based factors. The future year emissions were computed within SMOKE by multiplying the future year emission factors developed using MOVES with the year-specific activity data. Additional information on the approach for generating the onroad mobile source emissions is available in the Emissions Modeling TSD.

5. Development of Emission Inventories for Commercial Marine Vessels

The commercial marine vessel (CMV) emissions in the 2016 base case emission inventory for this rule were based on those in the 2017 NEI. Factors were then applied to adjust the 2017 NEI emissions backward to represent emissions for the year 2016. The CMV emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of $NO_X$, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect prior to 2016. The cumulative impacts of these rules through 2023 and 2028 were incorporated into the projected emissions for CMV sources. The CMV emissions were split into emissions inventories from the larger category 3 (C3) engines, and those from the smaller category 1 and 2 (C1C2) engines. Some minor adjustments to the CMV

[79] The effect of the HDGHG Phase 2 rule on criteria pollutants is estimated in Table 5–48 of the Regulatory Impact Analysis, available from *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF.*

[80] Information on the SAFE vehicles rule is available from *https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-final-rule.* Preliminary analysis by the Office of Transportation and Air Quality of the impact of this rule on criteria pollutants show impacts of less than 1 percent for VOC and no impact for $NO_X$.

emissions were implemented following the October 2019 2016v1 release. These updated CMV inventories were released publicly by February, 2020.[81]

6. Development of Emission Inventories for Other Nonroad Mobile Sources

Nonroad mobile source emission inventories (other than CMV, locomotive, and aircraft emissions) were developed from monthly, county, and process level emissions output from MOVES2014b. MOVES2014b included important updates to nonroad engine population growth rates. Types of nonroad equipment include recreational vehicles, pleasure craft, and construction, agricultural, mining, and lawn and garden equipment. State-submitted emissions data for nonroad sources were used for California.

EPA also ran MOVES2014b for 2023 and 2028 to prepare nonroad mobile emissions inventories for future years. The nonroad mobile emission control programs include reductions to locomotives, diesel engines, and recreational marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Emissions Modeling TSD.

Line haul locomotives are also considered a type of nonroad mobile source but the emissions inventories for locomotives were not developed using MOVES2014b. Year 2016 locomotive emissions were developed through the Inventory Collaborative and are mostly consistent with those in the 2017 NEI. The projected locomotive emissions for 2023 and 2028 were developed by applying factors to the base year emissions using activity data based on 2018 AEO freight rail energy use growth rate projections and emission rates adjusted to account for recent historic trends.

7. Development of Emission Inventories for Nonpoint Sources

The emissions for stationary nonpoint sources in our 2016 base case emission inventory are largely consistent with those in the 2014NEIv2, although some were adjusted to more closely reflect year 2016 using factors based on changes to human population from 2014 to 2016. Stationary nonpoint sources include evaporative sources, consumer products, fuel combustion that is not captured by point sources, agricultural livestock, agricultural fertilizer, residential wood combustion, fugitive dust, and oil and gas sources. For more information on the nonpoint sources in the 2016 base case inventory, see the Emissions Modeling TSD and the 2014NEIv2 TSD.

Where states provided the Inventory Collaborative information about projected control measures or changes in nonpoint source emissions, those inputs were incorporated into the projected inventories for 2023 and 2028. Adjustments for state fuel sulfur content rules for fuel oil in the Northeast were included. Projected emissions for portable fuel containers reflect the impact of projection factors required by the final MSAT2 rule and the EISA, including updates to cellulosic ethanol plants, ethanol transport working losses, and ethanol distribution vapor losses.

For 2016, nonpoint oil and gas emissions inventories were developed based on a run of EPA Oil and Gas Tool for 2016. To develop the future year inventories, regional projection factors for nonpoint oil and gas sources were developed by product type based on AEO 2018 projections to 2023 and 2028. Estimates of criteria air pollutant (CAP) co-benefit reductions resulting from the NESHAP for RICE and NSPS rules and Oil and Gas NSPS VOC controls for select source categories were included. Additional details on the application of these rules and projections for nonpoint sources are available in the Emissions Modeling TSD.

*C. Air Quality Modeling and Analyses To Identify Nonattainment and Maintenance Receptors*

In this section the Agency describes the air quality modeling and analyses performed in Step 1 to identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2008 8-hour ozone NAAQS in the 2021 analytic future year. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2021, that site is excluded from further analysis under EPA's good neighbor framework.

In this proposed rule, EPA is not reopening the approach used in the CSAPR Update to identify nonattainment and maintenance receptors. However, as an aid to understanding EPA's approach to identifying receptors, a summary of this approach follows.

EPA's approach gives independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina*.[82] Further, in its decision on the remand of the CSAPR from the Supreme Court in the *EME Homer City* case, the D.C. Circuit confirmed that EPA's approach to identifying maintenance receptors in the CSAPR comported with the court's prior instruction to give independent meaning to the ''interfere with maintenance'' prong in the good neighbor provision. *EME Homer City II,* 795 F.3d at 136.

In the CSAPR Update, EPA identified nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the $NO_X$ SIP Call and CAIR, where EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that EPA projects will be in nonattainment in the future compliance year.[83]

The Agency explained in the $NO_X$ SIP Call and CAIR and then reaffirmed in the CSAPR Update that EPA has the most confidence in our projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. EPA separately identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant period. EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value

[81] See 2016 emissions, 2023 emissions, and 2028 emissions under *ftp://newftp.epa.gov/air/emismod/2016/v1/*.

[82] 531 F.3d at 910–911 (holding that EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[83] *See* 63 FR 57375, 57377 (October 27, 1998); 70 FR 25241 (January 14, 2005). *See also North Carolina,* 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Therefore, applying this methodology in this proposed rule, EPA assessed the magnitude of the maximum projected design value for 2021 at each receptor in relation to the 2008 ozone NAAQS and, where such a value exceeds the NAAQS, EPA determined that receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City II*.[84] That is, monitoring sites with a maximum design value that exceeds the NAAQS are projected to have a maintenance problem in 2021.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term ''maintenance-only'' to refer to receptors that are not also nonattainment receptors. Consistent with the methodology described above, monitoring sites with a projected maximum design value that exceeds the NAAQS, but with a projected average design value that is below the NAAQS, are identified as maintenance-only receptors. In addition, those sites that are currently measuring ozone concentrations below the level of the applicable NAAQS, but are projected to be nonattainment based on the average design value and that, by definition, are projected to have a maximum design value above the standard are also identified as maintenance-only receptors.

As described above in section VI.B., EPA is using the 2016 and 2023 base case emissions developed under the EPA/MJO/state collaborative project as the primary source for base year and 2023 future year emissions data for this proposed rule. Because this platform does not include emissions for 2021, EPA developed an interpolation technique based on modeling for 2023 and measured ozone data to determine ozone concentrations for 2021. To estimate average and maximum design values for 2021, EPA first performed air quality modeling for 2016 and 2023 to obtain design values in 2023. The 2023 design values were then coupled with the corresponding 2016 measured design values to estimate design values in 2021 using the interpolation technique described below.

Consistent with EPA's modeling guidance,[85] the 2016 and 2023 air quality modeling results were used in a ''relative'' sense to project design values for 2023. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values[86] up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under ''average'' conditions. In addition, the Agency calculated maximum design values from within the 5-year base period to represent conditions when meteorology is more favorable than average for ozone formation. Because the base year for the air quality modeling used in this proposed rule is 2016, the base period 2014–2018 ambient ozone design value data was used in order to project average and maximum design values in 2023.

The ozone predictions from the 2016 and 2023 air quality model simulations were used to project 2014–2018 average and maximum ozone design values to 2023 using an approach similar to the approach in EPA's guidance for attainment demonstration modeling. This guidance recommends using model predictions from the ''3 x 3'' array of grid cells[87] surrounding the location of the monitoring site to calculate a Relative Response Factor (RRF) for that site.[88] The 2014–2018 average and maximum design values were multiplied by the RRF to project each of these design values to 2023. In this manner, the projected design values are grounded in monitored data, and not the absolute model-predicted 2023 concentrations. In light of comments on the Notice of Data Availability (82 FR 1733; January 6, 2017) and other analyses, EPA also projected 2023 design values based on a modified version of the ''3 x 3'' approach for those monitoring sites located in coastal areas. In this alternative approach, EPA eliminated from the RRF calculations the modeling data in those grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). The choice of more than 50 percent of the grid cell area as water as the criteria for identifying overwater grid cells is based on the treatment of land use in the Weather Research and Forecasting model (WRF).[89] Specifically, in the WRF meteorological model those grid cells that are greater than 50 percent overwater are treated as being 100 percent overwater. In such cases the meteorological conditions in the entire grid cell reflect the vertical mixing and winds over water, even if part of the grid cell also happens to be over land with land-based emissions, as can often be the case for coastal areas. Overlaying land-based emissions with overwater meteorology may be representative of conditions at coastal monitors during times of on-shore flow associated with synoptic conditions and/or sea-breeze or lake-breeze wind flows. But there may be other times, particularly with off-shore wind flow when vertical mixing of land-based emissions may be too limited due to the presence of overwater meteorology. Thus, for our modeling EPA calculated 2023 projected average and maximum design values at individual monitoring sites based on both the ''3 x 3'' approach as well as the alternative approach that eliminates overwater cells in the RRF calculation for near-coastal areas (*i.e.,* ''no water'' approach).

The 2023 average and maximum design values for both the ''3 x 3'' and ''no water'' approaches were then paired

[84] *See* 795 F.3d at 136.

[85] U.S. Environmental Protection Agency, 2018. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC. *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.*

[86] The ozone design value at a particular monitoring site is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration at that site.

[87] As noted above, each model grid cell is 12 x 12 km.

[88] The relative response factor represents the change in ozone based on emission changes at a given site. In order to calculate the RRF, EPA's modeling guidance recommends selecting the 10 highest ozone days in an ozone season at any given monitor in the base year, noting which of the grid cells in the 3x3 array experienced the highest ozone concentrations in the base year, and averaging those ten highest concentrations. The model is then run using the projected year emissions, in this case 2023, with all other model variables held constant. Ozone concentrations from the same ten days, in the same ten grid cells, are then averaged. The fractional change between the base year (2011 model run) averaged ozone concentrations and the future year (2023 model run) averaged ozone concentrations represents the relative response factor.

[89] *https://www.mmm.ucar.edu/weather-research-and-forecasting-model.*

with the corresponding base period measured design values at each ozone monitoring site. Design values for 2021 for both approaches were calculated by linearly interpolating between the 2016 base period and 2023 projected values.[90] The steps in the interpolation process for estimating 2021 average and maximum design values are as follows:

(1) Calculate the ppb change in design values between the 2016 base period and 2023;

(2) Divide the ppb change by 7 to calculate the ppb change per year over the 7-year period between 2016 and 2023;

(3) Multiply the ppb per year value by 5 to calculate the ppb change in design values over the 5-year period between 2016 and 2021;

(4) Subtract the ppb change between 2016 to 2021 from the 2016 design values to produce the design values for 2021.

The projected 2021 and 2023 design values using both the ''3 x 3'' and ''no-water'' approaches are provided in the AQM TSD.[91] EPA is soliciting public comment on the use of the ''3 x 3'' and ''no water'' approaches for this rulemaking (Comment C–2). For this proposed rule, EPA is relying upon design values based on the ''no water'' approach for identifying nonattainment and maintenance receptors.

Consistent with the truncation and rounding procedures for the 8-hour ozone NAAQS, the projected design values are truncated to integers in units of ppb.[92] Therefore, projected design values that are greater than or equal to 76 ppb are considered to be violating the 2008 ozone NAAQS. For those sites that are projected to be violating the NAAQS based on the average design values in 2021, the Agency examined the preliminary measured design values for 2019, which are the most recent available measured design values at the time of this proposal. As noted above, the Agency is proposing to identify nonattainment receptors in this rulemaking as those sites that are violating the NAAQS based on current measured air quality and also have projected average design values of 76 ppb or greater. Maintenance-only receptors include both (1) those sites with projected average design values above the NAAQS that are currently measuring clean data and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 76 ppb or greater. In addition to the maintenance-only receptors, the 2021 ozone nonattainment receptors are also maintenance receptors because the maximum design values for each of these sites is always greater than or equal to the average design value. The monitoring sites that the Agency projects to be nonattainment and maintenance receptors for the ozone NAAQS in the 2021 base case are used for assessing the contribution of emissions in upwind states to downwind nonattainment and maintenance of ozone NAAQS as part of this proposal.

Table VI.C–1 contains the 2014–2018 base period average and maximum 8-hour ozone design values, the 2021 base case average and maximum design values,[93] and the 2019 preliminary design values for the two sites that are projected to be nonattainment receptors in 2021 and the two sites that are projected to be maintenance-only receptors in 2021.[94] The design values for all monitoring sites in the U.S. are provided in the docket for this rule. Additional details on the approach for projecting average and maximum design values are provided in the AQM TSD.

TABLE VI.C–1—AVERAGE AND MAXIMUM 2014–2018 AND 2021 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2019 PRELIMINARY DESIGN VALUES (ppb) AT PROJECTED NONATTAINMENT AND MAINTENANCE-ONLY SITES

| Monitor ID | State | Site | Average design value 2014–2018 | Maximum design value 2014–2018 | Average design value 2021 | Maximum design value 2021 | 2019 Design value |
|---|---|---|---|---|---|---|---|
| **Nonattainment Receptors** | | | | | | | |
| 090013007 | CT | Stratford | 83.0 | 83 | 76.5 | 77.4 | 82 |
| 090019003 | CT | Westport | 82.7 | 83 | 78.5 | 78.9 | 82 |
| **Maintenance-Only Receptors** | | | | | | | |
| 090099002 | CT | Madison | 79.7 | 82 | 74.0 | 76.1 | 82 |
| 482010024 | TX | Houston | 79.3 | 81 | 75.5 | 77.1 | 81 |

[90] EPA examined the 2019 design values as a way to support the set of monitoring sites that were identified as receptors based on the 2021 interpolated design values. The outcome of this analysis was that each of the five receptors in 2021 had 2019 measured design values that exceeded the 2008 NAAQS. In addition, there are four other monitoring sites in the eastern U.S. that are not projected to be receptors in 2021, but that have 2019 design values that exceeded the NAAQS. Because the measured design values at these sites are only 1 or 2 ppb above the NAAQS, it is reasonable to assume that these four sites will be clean by 2021—which is consistent with the projections for these monitoring sites. Thus, the analysis of 2019 measured data and 2021 projections provides confidence in the approach for identifying nonattainment/maintenance receptors in 2021.

[91] Based on the 2021 design values, there are 129 monitoring sites that have different design values based on the ''3 x 3'' approach vs the ''no-water'' approach. For these 129 monitoring sites, the average difference is 0.41 ppb and the median difference is 0.28 ppb. The average and median percent differences between the ''3 x 3'' and ''no-water'' design values at these 129 monitoring sites are 0.65 percent and 0.52 percent, respectively. Thus, there is not much difference in the design values between these two approaches.

[92] 40 CFR part 50, Appendix P to part 50—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

[93] The design values for 2021 in this table are based on the ''no water'' approach.

[94] Using design values from the ''3 x 3'' approach does not change the total *number* of receptors in 2021. However, with the ''3 x 3'' approach the maintenance-only receptor in New Haven County, CT has a projected maximum design value of 75.5 ppb and would, therefore, not be a receptor using this approach. In contrast, monitoring site 090010017 in Fairfield County, CT has projected average and maximum design value of 75.7 and 76.3 ppb, respectively, with the ''3 x 3'' approach and would, therefore, be a maintenance-only receptor with this approach.

*D. Pollutant Transport From Upwind States*

1. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures EPA used to quantify the impact of emissions from specific upwind states on 2021 8-hour design values for the identified downwind nonattainment and maintenance receptors. EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique [95] to quantify the contribution of 2023 base case $NO_X$ and VOC emissions from all sources in each state to projected 2023 ozone design values at air quality monitoring sites. The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected 2023 base case emissions and 2016 meteorology for this time period. As described below, in the source apportionment modeling the Agency tracked (*i.e.,* tagged) the amount of ozone formed from anthropogenic emissions in each state individually as well as the contributions from other sources (*e.g.,* natural emissions).

To determine upwind contributions in 2021 the Agency applied the contributions from the 2023 modeling in a relative manner to the 2021 ozone design values. The analytic steps in the process are as follows:

(1) Calculate the 8-hour average contribution from each source tag to each monitoring site for the time period of the 8-hour daily maximum modeled concentrations in 2023;

(2) Average the contributions and concentrations for each of the top 10 modeled ozone concentration days in 2023 [96] and then divide the average contribution by the corresponding concentration to obtain a Relative Contribution Factor (RCF) for each monitoring site; and

(3) Multiply the 2021 design values by the 2023 RCF at each site to produce the average contribution metric values in 2021.[97] The resulting 2021 contributions from each tag to each monitoring site in the U.S. along with additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the AQM TSD.

In the source apportionment model run, EPA tracked the ozone formed from each of the following tags:

- States—anthropogenic $NO_X$ and VOC emissions from each state tracked individually (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic $NO_X$ and VOC emissions domain-wide (*i.e.,* not by state);
- Boundary Concentrations—concentrations transported into the modeling domain;
- Tribes—the emissions from those tribal lands for which the Agency has point source inventory data in the 2016v1 emissions modeling platform (EPA did not model the contributions from individual tribes);
- Canada and Mexico—anthropogenic emissions from sources in the portions of Canada and Mexico included in the modeling domain (EPA did not model the contributions from Canada and Mexico separately);
- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.,* not by state); and
- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms.

The contribution modeling provided contributions to ozone from anthropogenic $NO_X$ and VOC emissions in each state, individually. The contributions to ozone from chemical reactions between biogenic $NO_X$ and VOC emissions were modeled and assigned to the ''biogenic'' category. The contributions from wildfire and prescribed fire $NO_X$ and VOC emissions were modeled and assigned to the ''fires'' category. That is, the contributions from the ''biogenic'' and ''fires'' categories are not assigned to individual states nor are they included in the state contributions.

The average contribution metric is intended to provide a reasonable representation of the contribution from individual states to the projected 2021 design value, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner is beneficial since the magnitude of the contributions is directly related to the magnitude of the design value at each site.

The largest contribution from each state that is the subject of this rule to 8-hour ozone nonattainment and maintenance receptors in downwind states in 2021 is provided in Table VI.D–1.

[95] As part of this technique, ozone formed from reactions between biogenic VOC and anthropogenic $NO_X$ or biogenic $NO_X$ and anthropogenic VOC are assigned to the anthropogenic emissions. This approach is designed to fully capture as part of the anthropogenic contribution the total amount of ozone formed from photochemical reactions that involve emissions from all anthropogenic sources. In this manner, ozone is assigned to the controllable (*i.e.,* anthropogenic) precursors that react with non-controllable (*i.e.,* biogenic) precursors.

[96] The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year design values (*https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf*). In 2014 EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (*https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf*). For CSAPR Update we transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, we are calculating both the ozone design values and the contributions based on a top-10 day approach (*https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf*).

[97] The method for calculating the average contribution metric values in 2021 was also applied to 2023 and 2028 based on the projected design values and contribution modeling for each of those years, respectively.

TABLE VI.D–1.—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2021.

| Upwind state | Largest downwind contribution to nonattainment receptors for ozone (ppb) | Largest downwind contribution to maintenance-only receptors for ozone (ppb) |
|---|---|---|
| Alabama | 0.11 | 0.27 |
| Arkansas | 0.18 | 0.15 |
| Illinois | 0.81 | 0.80 |
| Indiana | 1.26 | 1.08 |
| Iowa | 0.17 | 0.22 |
| Kansas | 0.13 | 0.11 |
| Kentucky | 0.87 | 0.79 |
| Louisiana | 0.27 | 4.68 |
| Maryland | 1.21 | 1.56 |
| Michigan | 1.71 | 1.62 |
| Mississippi | 0.10 | 0.37 |
| Missouri | 0.36 | 0.33 |
| New Jersey | 8.62 | 5.71 |
| New York | 14.44 | 12.54 |
| Ohio | 2.55 | 2.35 |
| Oklahoma | 0.20 | 0.14 |
| Pennsylvania | 6.86 | 5.64 |
| Texas | 0.59 | 0.36 |
| Virginia | 1.30 | 1.69 |
| West Virginia | 1.49 | 1.55 |
| Wisconsin | 0.23 | 0.23 |

2. Application of Screening Threshold

EPA evaluated the magnitude of the contributions from each upwind state to downwind nonattainment and maintenance receptors. In Step 2 of the good neighbor framework, EPA uses an air quality screening threshold to identify upwind states that contribute to downwind ozone concentrations in amounts sufficient to ''link'' them to these to downwind nonattainment and maintenance receptors. The contributions from each of the CSAPR Update states to each downwind nonattainment and/or maintenance receptor that were used for the Step 2 evaluation can be found in the AQM TSD.

As discussed above in section V, EPA is not reopening the air quality screening threshold of 1 percent of the NAAQS used in the CSAPR Update. Therefore, as in the CSAPR Update, EPA uses an 8-hour ozone value for this air quality threshold of 0.75 ppb as the quantification of 1 percent of the 2008 ozone NAAQS.

a. States That Contribute Below the Screening Threshold

Of the 21 states that are the subject of this proposed rule, EPA has determined that the contributions from each of the following states to nonattainment and/or maintenance-only receptors in the 2021 analytic year are below the threshold: Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin. Because these states are considered not to contribute to projected downwind air quality problems, EPA proposes to determine that the CSAPR Update FIPs for these states (or, in the case of Alabama and Missouri, the SIP revisions later approved to replace the states' CSAPR Update FIPs) are a complete remedy to address their significant contribution under the good neighbor provision for the 2008 ozone NAAQS. These states remain subject to the ozone season $NO_X$ emission budgets established in the CSAPR Update, and EPA is not reopening the determinations in the CSAPR Update regarding these states.[98]

However, for each of these states, EPA notes that updates to the air quality and contributions analysis for the final rule could change the analysis as to which states have contributions to downwind receptors that meet or exceed the contribution screening threshold. In the event that such analysis conducted for the final rule demonstrates that any of those states that contribute amounts below the threshold in the proposal are projected to contribute amounts greater than or equal to the threshold in the final rule analysis, EPA proposes to apply the same Step 3 analysis applied to the linked states in this proposal and may finalize revised emissions budgets or other requirements (as presented for comment in this proposal) for such states. In order to ensure adequate notice of the potential for this change in our analysis between proposal and final and any resulting emission reduction obligations, EPA has calculated emissions budgets for EGUs in each of these nine states applying the same methodology and determinations used for the linked states in the Step 3 analysis described below. In addition, EPA would anticipate extending its proposed assessment of non-EGU sources (and associated requests for comment) for linked states to these states. Any adjustments in the implementation of the emissions budgets at Step 4 for linked states would also apply in these states. EPA is proposing to extend and apply any such analysis and/or emissions-reduction budgets to these states if, and only if, the final rule air quality modeling and other air quality and contribution analysis identifies a linkage as just described. The updated ozone season $NO_X$ emission budgets that may be applied in these states are available in the Ozone Transport Policy Analysis TSD.

[98] EPA notes that the updated modeling establishing that these states no longer contribute as of 2021 assumes in its baseline the continued implementation of the CSAPR Update budgets in these states.

*b. States That Contribute at or Above the Screening Threshold*

In this proposed rule, states with remanded emission budgets under the CSAPR Update that contribute to a specific receptor in an amount at or above the screening threshold in 2021 are considered linked to that receptor. The ozone contributions and emissions (and available emission reductions) for these states are analyzed further at Step 3, as described in section VII, to determine whether and to what extent emissions reductions might be required from each state.

Based on the maximum downwind contributions in Table VI.D–1, the Step 2 analysis identifies that the following 11 states contribute at or above the 0.75 ppb threshold to downwind nonattainment receptors: Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Based on the maximum downwind contributions in Table VI.D–1, the following 12 states contribute at or above the 0.75 ppb threshold to downwind maintenance-only receptors: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The levels of contribution between each of these linked upwind state and downwind nonattainment receptors and maintenance-only receptors are provided in Table VI.D–2 and Table VI.D–3, respectively.

TABLE VI.D–2—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND NONATTAINMENT RECEPTORS IN 2021

| Upwind state | Nonattainment receptors | |
|---|---|---|
| | Stratford, CT | Westport, CT |
| Illinois | 0.69 | 0.81 |
| Indiana | 0.99 | 1.26 |
| Kentucky | 0.78 | 0.87 |
| Louisiana | 0.27 | 0.27 |
| Maryland | 1.21 | 1.20 |
| Michigan | 1.16 | 1.71 |
| New Jersey | 7.70 | 8.62 |
| New York | 14.42 | 14.44 |
| Ohio | 2.34 | 2.55 |
| Pennsylvania | 6.72 | 6.86 |
| Virginia | 1.29 | 1.30 |
| West Virginia | 1.45 | 1.49 |

TABLE VI.D–3—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND MAINTENANCE-ONLY RECEPTORS IN 2021

| Upwind state | Maintenance-only receptors | |
|---|---|---|
| | Madison, CT | Houston, TX |
| Illinois | 0.80 | 0.02 |

TABLE VI.D–3—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND MAINTENANCE-ONLY RECEPTORS IN 2021—Continued

| Upwind state | Maintenance-only receptors | |
|---|---|---|
| | Madison, CT | Houston, TX |
| Indiana | 1.08 | 0.02 |
| Kentucky | 0.79 | 0.02 |
| Louisiana | 0.15 | 4.68 |
| Maryland | 1.56 | 0.00 |
| Michigan | 1.62 | 0.00 |
| New Jersey | 5.71 | 0.00 |
| New York | 12.54 | 0.00 |
| Ohio | 2.35 | 0.00 |
| Pennsylvania | 5.64 | 0.00 |
| Virginia | 1.69 | 0.00 |
| West Virginia | 1.55 | 0.00 |

In conclusion, as described above, states with contributions that equal or exceed 1 percent of the NAAQS to either nonattainment or maintenance receptors are identified as ''linked'' at Step 2 of the good neighbor framework and warrant further analysis for significant contribution to nonattainment or interference with maintenance under Step 3. EPA proposes that the following 12 States are linked at Step 2: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

## VII. Quantifying Upwind-State $NO_X$ Reduction Potential To Reduce Interstate Ozone Transport for the 2008 Ozone NAAQS

*A. The Multi-Factor Test*

This section describes EPA's methodology at step 3 of the 4-step framework for identifying upwind emissions that constitute ''significant'' contribution for the states subject to this proposed rule. This analysis focuses on the 12 states linked at steps 1 and 2 of the framework, as identified in the sections above. Following the existing framework as applied in the CSAPR Update, EPA's assessment of linked upwind state emissions reflects analysis of uniform $NO_X$ emission control stringency. The analysis has been extended to include assessment of non-EGU sources in addition to EGU sources in the linked upwind states.

Each level of uniform $NO_X$ control stringency is represented by an estimated cost per ton of $NO_X$ reduced and is characterized by a set of pollution control measures. EPA applies a multi-factor test—the same multi-factor test that was used in the CSAPR and the CSAPR Update [99]—to evaluate increasing levels of uniform $NO_X$ control stringency. The multi-factor test, which is central to EPA's step 3 quantification of significant contribution, considers cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform $NO_X$ control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. The uniform $NO_X$ emission control stringency, represented by marginal cost (or a weighted average cost in the case of EPA's non-EGU analysis), also serves to apportion the reduction responsibility among collectively contributing upwind states. This approach to quantifying upwind state emission-reduction obligations using uniform cost was reviewed by the Supreme Court in *EPA* v. *EME Homer City Generation,* which held that using such an approach to apportion emission reduction responsibilities among upwind states that are collectively responsible for downwind air quality impacts ''is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.'' 572 U.S. at 519. There are four stages in developing the multi-factor test: (1) Identify levels of uniform $NO_X$ control stringency, represented by an estimated cost-per-ton of control that is applied across linked upwind states; (2) evaluate potential $NO_X$ emission reductions associated with each identified level of uniform control stringency; (3) assess air quality improvements at downwind receptors for each level of uniform control stringency; and (4) select a level of control stringency considering the identified cost, available $NO_X$ emission reductions, and downwind air quality impacts, while also ensuring that emission reductions do not unnecessarily over-control relative to the contribution threshold or downwind air quality.

For both EGUs and non-EGUs, section VII.B describes the available mitigation technologies considered and their associated cost levels. Section VII.C discusses EPA's application of that information to assess emission reduction potential of the identified control strategies. Finally, section VII.D describes EPA's assessment of associated air quality impacts and EPA's subsequent identification of appropriate control stringencies considering the relevant factors (cost, available emission reductions, and downwind air quality impacts). As discussed in greater detail in section VII.D, EPA's multi-factor test informed EPA's determination of

[99] *See* CSAPR, Final Rule, 76 FR 48208 (Aug. 8, 2011).

appropriate EGU $NO_X$ ozone season emission budgets necessary to reduce emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS for the 2021 ozone season and subsequent control periods. Application of the multi-factor test to non-EGU sources has led EPA to propose to conclude that emissions reductions from non-EGU sources are not necessary to address significant contribution under the 2008 ozone NAAQS. In light of uncertainty in its current information on emissions, existing controls on emissions sources, and emission-reduction potential for non-EGU sources, however, EPA requests comment on its analysis, and whether, based on updated or more complete information, there may be grounds to find non-EGU emissions reductions are necessary to address significant contribution for the 2008 ozone NAAQS (Comment C–3).

This multi-factor approach is consistent with EPA's approach in the prior CSAPR and CSAPR Update actions. In addition, as was done in the CSAPR Update, EPA evaluated possible over-control by determining if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if upwind states could reduce their emissions below the 1 percent air quality contribution threshold at a lower cost threshold. This analysis is described in section VII.D below.

*B. Identifying Levels of Control Stringency*

1. EGU $NO_X$ Mitigation Strategies

In identifying levels of uniform control stringency for EGUs, EPA reassessed the same $NO_X$ control strategies that it had analyzed in the CSAPR Update, all of which are considered to be widely available in this sector: (1) Fully operating existing SCR, including both optimizing $NO_X$ removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art $NO_X$ combustion controls; (3) turning on existing idled Selective Non-Catalytic Reduction (SNCRs); (4) installing new SNCRs; and (5) installing new SCRs. For the reasons explained in the EGU $NO_X$ Mitigation Strategies TSD included in the docket for this proposed action, EPA determined that for the regional, multi-state scale of this rulemaking, only EGU $NO_X$ control strategies 1 and 3 are possible for the 2021 ozone season (fully operating existing SCRs, including both optimizing $NO_X$ removal by existing operational SCRs and turning on and optimizing existing idled SCRs; and turning on existing idled SNCRs). As discussed in section VII.B.1.b, EPA notes that it is not possible to install state-of-the-art $NO_X$ combustion controls by the beginning of the 2021 ozone season on a regional scale. EPA considers state-of-the-art $NO_X$ combustion controls at EGUs to be available by the beginning of the 2022 ozone season.

The following subsections describe EPA's identification of uniform levels of $NO_X$ emission control stringencies, each represented by an estimated marginal cost per ton of $NO_X$ reduced (in 2016$) and characterized by a set of EGU mitigation technologies.

a. $1,600 per Ton, Representing Optimizing Existing SCRs

Optimizing (*i.e.,* turning on idled or improving operation of partially operating) existing SCRs can substantially reduce EGU $NO_X$ emissions quickly using investments that have already been made in pollution control technologies. With the promulgation of the CSAPR Update, most operators improved their SCR performance and have continued to maintain that level of improved operation. However, this SCR performance is not universal and some drop has been observed as the CSAPR Update ozone-season allowance price has declined steadily since 2017. For example, recent power sector data from 2019 reveal that, in some cases, operating units have SCR controls that have been idled or are operating partially, and therefore suggest that there remains reduction potential through optimization.[100] EPA finds that optimizing all of these remaining SCRs in the 12 linked states is a readily available approach for EGUs to reduce $NO_X$ emissions.

EPA identifies $1,600 per ton as a level of uniform control stringency that represents optimizing SCR controls. EPA's analysis of this level of uniform control stringency is informed by comment on the CSAPR Update proposal and updated information on operation and industrial-input costs that have become available since the CSAPR Update.[101] While the costs of optimizing existing, operational SCRs include only variable costs, the cost of optimizing SCR units that are currently idled back into service considers both variable and fixed costs. Variable and fixed costs include labor, maintenance and repair, parasitic load, and ammonia or urea for use as a $NO_X$ reduction reagent in SCR systems. EPA performed an in-depth cost assessment for all coal-fired units with SCRs. More information about this analysis is available in the EGU $NO_X$ Mitigation Strategies Proposed Rule TSD, which is found in the docket for this proposed rule. The TSD notes that, for the subset of SCRs that are already partially operating, the cost of optimizing is often much lower than the $1,600 per ton marginal cost and often under $800 per ton.

EPA is using the same methodology to identify SCR performance as it did in the CSAPR Update rule. To estimate EGU $NO_X$ reduction potential from optimizing, EPA considers the difference between the non-optimized $NO_X$ emission rates and an achievable operating and optimized SCR $NO_X$ emission rate. To determine this rate in the CSAPR Update, EPA evaluated nationwide coal-fired EGU $NO_X$ ozone season emissions data from 2009 through 2015 and calculated an average $NO_X$ ozone season emission rate across the fleet of coal-fired EGUs with SCR for each of these seven years. EPA found it prudent to not consider the lowest or second-lowest ozone season $NO_X$ emission rates, which may reflect new SCR systems that have all new components (*e.g.,* new layers of catalyst). Data from these new systems are not representative of ongoing achievable $NO_X$ emission rates considering broken-in components and routine maintenance schedules. To identify the potential reductions from SCR optimization in this proposed action, EPA followed the same methodology and incorporated the latest reported coal-fired EGU $NO_X$ ozone season emissions data. EPA updated the timeframe to include the most recent and best available operational data (*i.e.,* 2009 up through 2019). Considering the emissions data over the full time period of available data results in a third-best rate of 0.08 Pounds per Million British Thermal Units (lb/mmBtu). EPA notes that over half of the SCR-controlled EGUs achieved a $NO_X$ emission rate of 0.068 lbs/mmBtu or less over their third-best entire ozone season. Moreover, for the SCR-controlled coal units that EPA identified as having a 2019 emission rate greater than 0.08 lb/mmBtu, EPA verified that in prior years, the majority (over 90 percent) of these

[100] See ''Ozone Season Data 2018 vs. 2019'' and ''Coal-fired Characteristics and Controls'' at *https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason.*

[101] The CSAPR Update found $1,400 per ton was a level of uniform control stringency that represented turning on idled SCR controls. EPA uses the same costing methodology, but updating for input cost increases (*e.g.,* urea reagent) to arrive at $1,600 per ton in this proposal (while also updated from 2011 dollars to 2016 dollars).

same units had demonstrated and achieved a $NO_X$ emission rate of 0.08 lb/mmBtu or less on a seasonal and/or monthly basis. This further supports EPA's determination that 0.08 lb/mmBtu reflects a reasonable emission rate for representing SCR optimization in quantifying state emission budgets as discussed in section VIII.B. This fleet-level emission rate assumption of 0.08 lb/mmBtu for non-optimized units reflects, on average, what those units would achieve when optimized. Some of these units may achieve rates that are lower than 0.08 lb/mmBtu, and some units may operate above that rate based on unit-specific configuration and dispatch patterns. EPA evaluated the feasibility of optimizing idled SCRs for the 2021 ozone season. Based on past practice, EPA finds that idled controls can be restored to operation quickly (less than two months). This timeframe is informed by many electric utilities' previous long-standing practice of utilizing SCRs to reduce EGU $NO_X$ emission during the ozone season while putting the systems into protective lay-up during the non-ozone season months. For example, this was the long-standing practice of many EGUs that used SCR systems for compliance with the $NO_X$ Budget Trading Program. It was quite typical for SCRs to be turned off following the September 30 end of the ozone season control period. These controls would then be put into protective lay-up for several months of non-use before being returned to operation by May 1 of the following ozone season.[102] Therefore, EPA believes that SCR optimization mitigation strategies are available for the 2021 ozone season.

The vast majority of SCR controlled units (nationwide and in the 12 linked states) are already partially operating these controls during the ozone season based on historical 2019 emissions rates. EPA believes that this widely demonstrated seasonal behavior of turning on idled SCRs also supports the Agency's finding that optimizing existing SCR systems currently being operated to some degree within the ozone season, which would necessitate fewer changes to SCR operation relative to restarting idled systems, is also feasible for the 2021 ozone season. Full operation of existing SCRs that are already operating to some extent involves increasing reagent (*i.e.,* ammonia or urea) flow rate, and maintaining and replacing catalyst to sustain higher $NO_X$ removal rate operations. Increasing $NO_X$ removal by SCR controls that are already operating can be implemented by procuring more reagent and catalyst. EGUs with SCR routinely procure reagent and catalyst as part of ongoing operation and maintenance of the SCR system. In many cases, where EPA has identified EGUs that are operating their SCR at non-optimized $NO_X$ removal efficiencies, EGU data indicate that these units historically have achieved more efficient $NO_X$ removal rates. Therefore, EPA finds that optimizing existing SCRs currently being operated could generally be done by reverting back to previous operation and maintenance plans. Regarding full operation activities, existing SCRs that are only operating at partial capacity still provide functioning, maintained systems that may only require increased chemical reagent feed rate up to their design potential and catalyst maintenance for mitigating $NO_X$ emissions. Units must have adequate inventory of chemical reagent and catalyst deliveries to sustain operations. Considering that units have procurement programs in place for operating SCRs, this may only require updating the frequency of deliveries. This may be accomplished within a few weeks.

b. $1,600 per Ton, Representing Installing State-of-the-Art $NO_X$ Combustion Controls

EPA also includes installing state-of-the-art combustion controls in the level of uniform control stringency represented by $1,600 per ton. State-of-the-art combustion controls such as low-$NO_X$ burners (LNB) and over-fire air (OFA) can be installed and/or updated quickly and can substantially reduce EGU $NO_X$ emissions. In the 12 states linked to downwind receptors under this proposed rule, approximately 99 percent of coal-fired EGU capacity is equipped with some form of combustion control; however, the control configuration and/or corresponding emission rates at some units indicate they may not currently have state-of-the-art combustion control technology. Upgrading existing combustion controls to state-of-the-art combustion control alone can achieve $NO_X$ emission rates of 0.139 to 0.155 lbs/mmBtu,[103] and, once installed, reduce $NO_X$ emissions at all times of EGU operation. EPA proposes that the installation of state-of-the-art combustion controls is a readily available approach for EGUs to reduce $NO_X$ emissions by the start of the 2022 ozone season.

EPA also finds that, generally, state-of-the-art combustion control upgrades require a short installation time—as little as four weeks to install with a scheduled outage (with permitting, design, order placement, fabrication, and delivery occurring beforehand). Feasibility of installing combustion controls was examined by EPA in CSAPR where industry demonstrated the ability to install state-of-the-art LNB controls on a large unit (800 MW) in under six months. EPA received comments in the CSAPR Update on installation of combustion controls from the Institute of Clean Air Companies.[104] Commenters provided information on the equipment and typical installation time frame for new combustion controls, accounting for all steps, and noted it generally takes between 6–8 months on a typical boiler—covering the time through bid evaluation through start-up of the technology. The deployment schedule was described as:

- 4–8 weeks—bid evaluation
- 4–6 weeks—engineering and completion of engineering drawings
- 2 weeks—drawing review and approval from user
- 10–12 weeks—fabrication of equipment and shipping to end user site
- 2–3 weeks—installation at end user site.
- 1 week—commissioning and start-up of technology

Given previous comments and EPA observations on past installations, EPA does not believe that it is possible to obtain installation of these controls between rule finalization and the start of the 2021 ozone season. However, EPA does believe the technology could be installed by the start of the 2022 ozone season. More details on these analyses can be found in the EGU $NO_X$ Mitigation Strategies Proposed Rule TSD.

The cost of installing state-of-the-art combustion controls per ton of $NO_X$ reduced is dependent on the combustion control type and unit type. EPA estimates the cost per ton of state-of-the-art combustion controls to be $400 per ton to $1,200 per ton of $NO_X$ removed using a representative capacity

[102] In the 22 state CSAPR Update region, 2005 EGU $NO_X$ emissions data suggest that 125 EGUs operated SCR systems in the summer ozone season while idling these controls for the remaining 7 non-ozone season months of the year. Units with SCR were identified as those with 2005 ozone season average $NO_X$ rates that were less than 0.12 lbs/mmBtu and 2005 average non-ozone season $NO_X$ emission rates that exceeded 0.12 lbs/mmBtu and where the average non-ozone season $NO_X$ rate was more than double the ozone season rate.

[103] Details of EPA's assessment of state-of-the-art $NO_X$ combustion controls are provided in the EGU $NO_X$ Mitigation Strategies Proposed Rule TSD.

[104] EPA–HQ–OAR–2015–0500–0093

factor of 70 percent. See the $NO_X$ Mitigation Strategies Proposed Rule TSD for additional details. In specifying a representative marginal cost at which state-of-the-art combustion controls are widely available, EPA considered all of these estimated costs and finds that the cost is typically comparable to the EGU $NO_X$ control stringency of $1,600 per ton, and hence EPA includes installing state-of-the-art $NO_X$ combustion controls in the uniform control stringency level represented by $1,600 per ton of $NO_X$ removed.

c. $3,900 per ton, Representing Turning on Idled Existing SNCRs

Turning on idled existing SNCRs can also reduce EGU $NO_X$ emissions quickly, using investments in pollution control technologies that have already been made. Compared to no post combustion controls on a unit, SNCRs can achieve a 25 percent reduction on average in EGU $NO_X$ emissions (with sufficient reagent). These controls are in use to some degree across the U.S. power sector. In the 12 states identified in this proposed rule, approximately 14 percent of coal-fired EGU capacity is equipped with SNCR. Recent power sector data suggest that, in some cases, SNCR controls have been idled or operating less in 2019 relative to performance in prior years.[105] EPA finds that turning on idled SNCRs is an available approach for EGUs to reduce $NO_X$ emissions, and similar to restarting idled SCR controls, could be done in time for the 2021 ozone season.

EPA identifies $3,900 per ton as a level of uniform control stringency that represents turning on and fully operating idled SNCRs. For existing SNCRs that have been idled, unit operators may need to restart payment of some fixed and variable costs associated with these controls. Fixed and variable costs include labor, maintenance and repair, parasitic load, and ammonia or urea. The majority of the total fixed and variable operating costs for SNCR is related to the cost of the reagent used (*e.g.,* ammonia or urea) and the resulting cost per ton of $NO_X$ reduction is sensitive to the $NO_X$ rate of the unit prior to SNCR operation. For more details on this assessment, refer to the EGU $NO_X$ Mitigation Strategies Proposed Rule TSD in the docket for this proposed rule.

d. $5,800 per ton, Representing Installing New SNCRs.

The amount of time needed to retrofit an EGU with new SNCR extends beyond the 2021 Serious area attainment date. However, similar to SCR retrofits discussed in section VII.B.1.e, and consistent with the *Wisconsin* decision, EPA evaluated potential emission reductions and associated costs from this control technology, and assessed the impacts and need for this emissions control strategy at the earliest point in time when post combustion control installation could be achieved. SNCR installations, while generally having shorter project timeframes (*i.e.,* as little as 16 months for an individual power plant installing controls on more than one boiler), share similar implementation steps with and also need to account for the same regional factors as SCR installations.[106] For example, SNCR installation at the Jeffrey power plant (Kansas) was in the planning phase in 2013 but not in service until 2015.[107] Therefore, EPA finds that more than 16 months would be needed to complete all necessary steps of SNCR development at EGUs on a regional scale. EPA discusses the timing of SNCR and SCR post-combustion retrofits together and in more detail in section VII.C.1.

SNCR technology provides owners a relatively less capital-intensive option for reducing $NO_X$ emissions compared to SCR technology, albeit at the expense of higher operating costs on a per-ton basis and less total emission reduction potential. EPA examined the remaining nationwide coal-fired fleet that lack SNCR or other $NO_X$ post-combustion control to estimate a representative cost of SNCR installation (on a $ per ton basis). Costs were estimated using the operating and unit characteristics specific to this fleet. As described in the $NO_X$ Mitigation Strategies Proposed Rule TSD, EPA proposes that $5,800 per ton is the representative cost of these controls reflecting a cost level at which they are available for a majority of the uncontrolled fleet.

e. $9,600 per ton, Representing Installing New SCRs.

The amount of time needed to retrofit an EGU with new SCR extends beyond the 2021 Serious area attainment date. However, similar to SNCR retrofits discussed above, and consistent with the *Wisconsin* decision, EPA evaluated potential emission reductions and associated costs from this control technology, as well as assessed the impacts and need for this emissions control strategy at the earliest point in time when their installation could be achieved. The amount of time to retrofit EGUs with new SCR varies between approximately 2 and 4 years depending on site-specific engineering considerations and on the number of installations being considered. In prior actions, EPA has noted 39–48 months as appropriate for regionwide actions when EPA is evaluating multiple installations at multiple locations.[108]

The Agency examined the cost for retrofitting a unit with new SCR technology, which typically attains controlled $NO_X$ rates of 0.07 lbs/mmBtu or less. Based on the characteristics of the remaining nationwide coal fleet that does not have a post-combustion control retrofit, EPA determined that for unit and performance characteristics representative of that subgroup, $9,600 per ton was the cost level that represents the point at which the SCR retrofit technology was typically available for the majority of these sources. For more details on this assessment, refer to the EGU $NO_X$ Mitigation Strategies Proposed Rule TSD in the docket for this proposed rule.

*Generation shifting* – Finally, for each of the technologies considered above, EPA evaluates emission reduction potential from generation shifting at that representative dollar per ton level. Shifting generation to lower $NO_X$-emitting or zero-emitting EGUs occurs in response to economic factors. As the cost of emitting $NO_X$ increases, it becomes increasingly cost-effective for units with lower $NO_X$ rates to increase generation, while units with higher $NO_X$ rates reduce generation. Because the cost of generation is unit-specific, this generation shifting occurs incrementally on a continuum. Consequently, there is more generation shifting at higher cost $NO_X$-control levels. Because the Agency

[105] See ''Ozone Season Data 2018 vs. 2019'' and ''Coal-fired Characteristics and Controls'' at *https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason*

[106] A month-by-month evaluation of SNCR installation is discussed in EPA's ''Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies'' at Exhibit A–6 and in EPA's $NO_X$ Mitigation Strategies TSD. As noted at proposal, the analysis in this exhibit estimates the installation period from contract award as within a 10–13-month timeframe. The exhibit also indicates a 16-month timeframe from start to finish, inclusive of pre-contract award steps of the engineering assessment of technologies and bid request development. The timeframe cited for installation of SNCR at an individual source in this final action is consistent with this more complete timeframe estimated by the analysis in the exhibit.

[107] 2013 EIA Form 860, Schedule 6, Environmental Control Equipment.

[108] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), available at *https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

has identified discrete cost thresholds resulting from the full implementation of particular types of emission controls, it is reasonable to simultaneously quantify and include the reduction potential from generation shifting at each cost level up to levels that are consistent with control operation. Including these reductions is important, ensuring that other cost-effective reductions (*e.g.,* fully operating controls) at each cost level can be expected to occur. Generation shifting treatment and results are discussed in greater detail in the $NO_X$ Mitigation Strategies Proposed Rule TSD.

In general, when EPA estimates emission reduction potential from generation shifting, EPA finds small amounts of generation shifting to existing lower $NO_X$- emitting or zero-emitting units could occur consistent with the near-term implementation timing for this proposed rule. As a proxy for limiting the amount of generation shifting that is feasible for the near-term ozone seasons, EPA limits its assessment to shifting generation to other EGUs within the same state. EPA believes that limiting its evaluation of shifting generation (which EPA sometimes refers to as re-dispatch) to the amount that could occur within the state represents a conservatively small amount of generation-shifting because it does not capture further potential emission reductions that would occur if generation was shifted more broadly among units in different states within the interconnected electricity grid. EPA seeks comment on the extent to which generation shifting towards lower-emitting resources should be incorporated into the overall EGU emission reductions reflected in the state emission budgets (Comment C–4).

Finally, EPA seeks comment on whether other ozone-season $NO_X$ mitigation technologies should be considered (Comment C–5). EPA invites comments on the cost and performance of the above listed technologies and any other potential mitigation technologies. For example, in January of 2020 the New York Department of Environmental Conservation adopted a rule to limit emissions from combustion turbines that operate as peaking units. EPA has not historically considered $NO_X$ mitigation technologies for these sources in its rulemakings, such as the CSAPR and the CSAPR Update, but invites comment on their appropriateness for this rulemaking. Separately, location and high emission rates of grid-connected municipal solid waste combustors, generally not covered under EPA's transport rules given their small size and differing purpose, have also led some stakeholders to suggest mitigation measures be considered for those sources. EPA similarly invites comment on mitigation opportunities for all of these mitigation technologies discussed in this section and, in particular, requests comment on its discussion of these additional strategies in the $NO_X$ Mitigation Strategies Proposed Rule TSD.

2. Non-EGU $NO_X$ Mitigation Strategies

EPA has not regulated emissions from non-EGU sources as part of its regional transport rulemakings since the 1998 $NO_X$ SIP Call. In *Wisconsin,* the D.C. Circuit held that EPA must on remand implement a full remedy by the next attainment date (2021 for this proposed rule), or as soon as possible thereafter on a showing of impossibility, to achieve necessary reductions by that date. 938 F.3d at 320. The court also directed the Agency to address non-EGU sources, unless ''the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment.'' *Id.* at 318–20 (quoting *Massachusetts* v. *EPA,* 549 U.S. 497, 534 (2007)). The D.C. Circuit found that the practical obstacles EPA identified with respect to its evaluation of non-EGUs in the CSAPR Update did not rise to the level of an ''impossibility,'' *id.* The court also found that EPA must make a higher showing of uncertainty regarding non-EGU point-source $NO_X$ mitigation potential before declining to regulate such sources on the basis of ''uncertainty.'' *Id.* In this proposed rule, EPA has extended its analysis to include all major stationary source sectors in the linked upwind states, including non-EGU emissions sources in various industry sectors. As discussed in section VI, of the 22 states originally included in the CSAPR Update, EPA proposes in this action that 12 states warrant analysis at step 3 for significant contribution to downwind nonattainment and/or maintenance receptors for the 2008 ozone NAAQS. Therefore, the Agency focused its Step 3 assessment on non-EGU sources in these 12 states. For these sources, EPA retained its focus on $NO_X$ as the most effective precursor pollutant for addressing interstate ozone transport at a regional scale. *See* 82 FR 51238, 51248 (Nov. 3, 2017) (citing 76 FR 48222) and 63 FR 57381.

For non-EGU sources, there are many types of emissions sources or units that emit $NO_X$ and many control technologies or combinations of control technologies for these sources or units. As such, there are many approaches to assessing emission reduction potential from non-EGU emissions sources or units. In this assessment, EPA attempted to apply the multi-factor test used for EGUs to determine an appropriate stringency level for non-EGU sources in linked upwind states. EPA identified available control technologies and estimated their costs and potential emissions reductions. The information the Agency currently has regarding implementation timeframes to determine potential air quality impacts in relevant future years was also considered.

To identify levels of control for non-EGU sources, EPA used the Control Strategy Tool (CoST),[109] the Control Measures Database (CMDb), and the projected 2023 inventory from the 2016v1 modeling platform. EPA assessed potential emissions reductions associated with applying controls to emissions units with 150 tons per year (tpy) or more of pre-control $NO_X$ emissions in 2023, which is an emissions threshold comparable to 25 MW for EGUs used in prior interstate transport rulemakings. To derive this emissions threshold, EPA used emissions expected from an average 25 MW EGU unit operating at a median heat rate, emission rate, and capacity factor for a coal-fired unit.[110] In CoST, the Agency used the maximum emission reduction strategy [111] to estimate the largest quantity of potential emissions reductions from each emissions source or unit located in the 12 upwind states linked to downwind receptors in this proposed rule. 11 of the 12 upwind states had sources with 150 tpy or more of pre-control $NO_X$ emissions in 2023; the projected 2023 emissions inventory did not include non-EGU point sources in New Jersey with pre-control NOx emissions greater than 150 tpy for which CoST had applicable control measures.

For the 12 linked states, EPA categorized the CoST results for control technologies that comprise approximately 92 percent of the total estimated potential emissions

[109] Further information on CoST can be found at the following link: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modelstools-air-pollution.*

[110] For additional details on calculating the 150 tpy emissions threshold, please see the section titled *Background for Determining Source Size/Threshold for Non-EGU Emissions Sources* in the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this proposed rule.

[111] The maximum emission reduction algorithm assigns to each source the single measure (if a measure is available for the source) that provides the maximum reduction to the target pollutant, regardless of cost. For more information, see the CoST User's Guide available at the following link: *https://www.cmascenter.org/cost/documentation/3.5/CoST%20User's%20Guide/.*

reductions from the non-EGU sources with 150 tpy or more of $NO_X$ emissions in these states;[112] those technologies and related emissions sources are summarized in Table VII.B.2–1 below. In tranche one before further refinement and verification, the number of emissions units CoST applied SCR to was 51 and the number of emissions units CoST applied SNCR to was 23. The estimated emissions reductions from those control applications were 12,724 ozone season tons. In tranche two before further refinement and verification, the number of emissions units CoST applied layered combustion to was 49, the number of emissions units CoST applied NSCR or layered combustion to was 65, and the number of emissions units CoST applied ultra-low $NO_X$ burner and SCR to was 56. The estimated emissions reductions from those control applications were 17,283 ozone season tons. EPA then calculated a weighted average cost per ton (in 2016$) for estimated potential reductions associated with each control technology and plotted the weighted average cost per ton values. From the resulting curve, EPA identified a clear break point that defined two tranches of potential emissions reductions, as shown in Table VII.B.2–1. For additional details on the curve and the potential emissions reductions in tranches one and two, please see the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this proposed rule.

TABLE VII.B.2–1—DETAILS ON TRANCHES ONE AND TWO OF POTENTIAL EMISSIONS REDUCTIONS

| Tranche | Technologies/industry sectors or source groups | Weighted average cost (2016$ per ton) | Cost range (2016$ per ton) |
|---|---|---|---|
| Tranche One | SCR/Glass Manufacturing, IC Engines<br>SNCR/Cement Manufacturing | 2,000 | 64 [113]–5,700 |
| Tranche Two | Layered Combustion/Lean Burn IC Engines<br>NSCR or Layered Combustion/Industrial Rich Burn Natural Gas IC Engines*.<br>Ultra-low $NO_X$ Burner and SCR/Industrial Boilers | 5,000–6,600 | 1,400–9,700 |

Note: * NSCR is non-selective catalytic reduction, a control technology applicable to rich-burn natural gas-fired IC engines.

Given the large number of emissions units in a given industry sector that could require control installation, EPA does not have detailed information on the time needed to install all of the control technologies identified in Table VII.B.2–1. Any installation timing estimates would need to reflect the time needed to install controls across a potentially large number of sources, the time needed to have $NO_X$ monitoring installed, and other steps in the permitting and construction processes. EPA previously examined the time necessary to install some of the controls indicated in Table VII.B.2–1 for different industries in the 2016 *Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU* $NO_X$ *Emission Controls, Cost of Controls, and Time for Compliance Final TSD* (''CSAPR Update Non-EGU TSD''), which is discussed in Section VII.C.2. EPA expects that the controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region affected by this proposed rule. Therefore, based on the information available to us at this time, EPA proposes that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could likely be installed. EPA thus concludes that no $NO_X$ controls for non-EGUs included in this cost analysis can be installed by the 2021 ozone season. Additional information on installation times for non-EGU $NO_X$ controls can be found in Section VII.C.

3. Mobile Source $NO_X$ Mitigation Strategies

Under a variety of CAA programs, EPA has established federal emissions and fuel quality standards that reduce emissions from cars, trucks, buses, nonroad engines and equipment, locomotives, marine vessels, and aircraft (*i.e.,* ''mobile sources''). Because states are generally preempted from regulating new vehicles and engines with certain exceptions (*see generally* CAA sections 209, 177), mobile source emissions are primarily controlled through EPA's federal programs. EPA has been regulating mobile source emissions since it was established as a federal agency in 1970, and all mobile source sectors are currently subject to $NO_X$ emissions standards. EPA factors these standards and associated emission reductions into its baseline air quality assessment in good neighbor rulemaking, including in this action. Such reductions are an important reason for the historical and long-running trend of improving air quality in the United States. These trends help explain why the overall number of receptors and severity of ozone nonattainment problems under the 2008 ozone NAAQS continues to decline. Such data are factored into EPA's analysis at steps 1 and 2 of the 4-step framework. As a result of this long history, $NO_X$ emissions from onroad and nonroad mobile sources have substantially decreased (73 percent and 57 percent since 2002, for onroad and nonroad, respectively)[114] and are predicted to continue to decrease into the future as newer vehicles and engines that are subject to the most recent, stringent standards replace older vehicles and engines.[115]

For example, in 2014 EPA promulgated new, more stringent emissions and fuel standards for light-

[112] CoST applied a few additional controls that are not commonly used and did not result in significant additional emissions reductions. Ten different control technology applications make up the remaining 8 percent of the control technology applications. Compared to the five technologies EPA assessed further, these ten control technology applications do not, individually or collectively, have the potential to result in significant additional emissions reductions. For additional details, see the technical memorandum titled *Assessing Non-EGU Emission Reduction Potential* and the Excel workbook titled *Control Summary—Max Emission Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—05-18-2020.xlsx* in the docket for this proposed rule.

[113] For the emissions unit estimated to generate emissions reductions at $64 per ton, the emissions and cost estimates were incorrect. The 2023 projected emissions for the unit were significantly overestimated as a result of a growth factor EPA received for these emissions from a multi-jurisdictional partner organization. Further, the equation used to estimate the cost was mis-specified in CoST, and the true cost is likely on the order of $800 per ton. Changes to these underlying factors will likely guide an updated assessment for a final rulemaking.

[114] US EPA. Our Nation's Air: Status and Trends Through 2019. *https://gispub.epa.gov/air/trendsreport/2020/#home.*

[115] National Emissions Inventory Collaborative (2019). 2016v1 Emissions Modeling Platform. Retrieved from *http://views.cira.colostate.edu/wiki/wiki/10202.*

duty passenger cars and trucks.[116] The fuel standards took effect in 2017, and the vehicle standards are phasing in between 2017 and 2025. Other EPA actions that are continuing to reduce $NO_X$ emissions include the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002; January 18, 2001); the Clean Air Nonroad Diesel Rule (69 FR 38957; June 29, 2004); the Locomotive and Marine Rule (73 FR 25098; May 6, 2008); the Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034; October 8, 2008); the New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895; April 30, 2010); and the Aircraft and Aircraft Engine Emissions Standards (77 FR 36342; June 18, 2012).

EPA is currently developing a new regulatory effort to reduce $NO_X$ and other pollution from heavy-duty trucks (known as the Cleaner Trucks Initiative), as described in the January 21, 2020, Advance Notice of Proposed Rulemaking (85 FR 3306). Heavy-duty vehicles are the largest contributor to mobile source emissions of $NO_X$ and will be one of the largest mobile source contributors to ozone in 2025.[117] Reducing heavy-duty vehicle emissions nationally would improve air quality where the trucks are operating as well as downwind. As required by CAA section 202(a)(3)(A) of the Act, EPA will be proposing $NO_X$ emission standards that ''reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.'' Section 202(a)(3)(C) requires that standards apply for no less than 3 model years and apply no earlier than 4 years after promulgation.

Given these requirements, EPA is considering implementation of new heavy-duty $NO_X$ emission standards beginning in model year 2027. In addition, any new rulemaking process for other mobile source sectors would not achieve actual $NO_X$ emissions reductions before 2025, given the lead time necessary for EPA and for manufacturers.

However, EPA's existing regulatory program will continue to reduce $NO_X$ emissions into the future, and EPA is currently taking active steps to ensure that these $NO_X$ reductions occur. The CAA prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. EPA currently has a National Compliance Initiative called ''Stopping Aftermarket Defeat Devices for Vehicles and Engines,'' which focuses on stopping the manufacture, sale, and installation of hardware and software specifically designed to defeat required emissions controls on onroad and nonroad vehicles and engines.

*C. Control Stringencies Represented by Cost Threshold ($ per ton) and Corresponding Emission Reduction Potential*

1. EGU Emissions Reduction Potential by Cost Threshold

For EGUs, as discussed in section VII.A, the multi-factor test considers increasing levels of uniform control stringency, where each level is represented by cost per ton of emissions reduced, in combination with consideration of total $NO_X$ reduction potential and corresponding air quality improvements. To determine which cost thresholds to use to assess upwind state $NO_X$ mitigation potential, EPA evaluated EGU $NO_X$ control costs that represent the thresholds at which various control technologies are widely available (described previously in section VII.B.1), the use of certain cost thresholds in previous rules to address ozone transport, and cost thresholds incorporated into state requirements to address ozone nonattainment.

EPA began by determining the appropriate range of costs to evaluate. In the CSAPR Update, $1,400 per ton in 2011$ was the EGU $NO_X$ cost threshold relied upon to partially address obligations in time for the 2017 ozone season. This figure represented the lowest marginal cost where EPA expects SCR optimization at all existing SCR controls (including fully idled controls [118]) to be cost-effective. Based on our assessment of EGU $NO_X$ mitigation strategies, this same technology would now have a cost of $1,600 per ton in 2016$.[119] Specifically, the cost of this approach to $NO_X$ reduction is the marginal cost of optimizing existing SCRs at higher levels of $NO_X$ removal than they are currently achieving if their current rate is greater than 0.08 lb/mmBtu. Given that EPA has already determined this technology is cost-effective and reasonable to consider for significant contribution determination in the CSAPR Update (and those determination were not remanded), EPA has not included a representation of mitigation technologies with any lower cost levels in this proposal's analyses in Step 3. (Further, as explained below, such analysis is not necessary for purposes of checking for overcontrol at the selected cost threshold.)

EPA then evaluated EGU $NO_X$ cost thresholds to determine an appropriate upper bound for our assessment. EPA identified $9,600 per ton as an upper bound as it represented the most stringent mitigation technology (SCR retrofit) that EPA identified in its assessment. EPA seeks comment on whether $1,600 per ton is an appropriate minimum and $9,600 per ton is an appropriate maximum uniform cost threshold to evaluate for the purpose of quantifying EGU $NO_X$ reductions to reduce interstate ozone transport for the 2008 ozone NAAQS (Comment C–6).

EPA then determined appropriate EGU $NO_X$ cost thresholds to evaluate within the range of $1,600 per ton to $9,600 per ton and identified two additional thresholds. Table VII.C.1–1 lists the EGU $NO_X$ cost thresholds evaluated and the $NO_X$ reduction strategy or policy used to identify each cost threshold. As described above in Section VII.B, these cost thresholds are informed by our assessment of the costs at which EGU $NO_X$ control strategies are widely available. Evaluating additional cost thresholds in between the four thresholds EPA identifies here would not yield meaningful insights as to $NO_X$ reduction potential. EPA-selected cost thresholds represent the points at which specific control technologies become widely available and thereby where the most significant incremental emission reduction potential is expected. Analyzing costs between these cost thresholds is not expected to reveal significant incremental emission reduction potential that isn't already anticipated at the analyzed cost thresholds.

[116] Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 79 FR 23414 (April 28, 2014).

[117] Zawacki et al, 2018. Mobile source contributions to ambient ozone and particulate matter in 2025. Atmospheric Environment. Vol 188, pg 129–141. Available online: *https://doi.org/10.1016/j.atmosenv.2018.04.057*.

[118] EPA had estimated an $800 threshold representing optimizing SCRs for existing SCRs currently in some level of operation. See 81 FR 7540–41. In this action, EPA has combined this level of control into the $1600 control strategy for EGUs.

[119] Note, a portion of the cost increase from $1400 to $1600 is simply adjusting from 2011$ to 2016$, but some is also due to change in material costs.

TABLE VII.C.1–1—EGU $NO_X$ COST THRESHOLDS AND $NO_X$ REDUCTION STRATEGIES

| EGU $NO_X$ cost threshold (2016$) [120] | Technology |
|---|---|
| $1,600 per ton | Fully operating all existing post-combustion SCR controls and combustion control installation or upgrade. |
| $3,900 per ton | Widespread availability of restarting idled SNCRs. |
| $5,800 per ton | Widespread availability of new SNCRs. |
| $9,600 per ton | Widespread availability of new SCRs. |

EPA proposes that this range and selection of uniform cost thresholds are appropriate to evaluate potential EGU $NO_X$ reduction obligations to address interstate ozone transport for the 2008 ozone NAAQS. Because these cost thresholds are linked to costs at which EGU $NO_X$ mitigation strategies become widely available in each state, the cost thresholds represent the break points in a marginal cost curve at which the most significant step-changes in EGU $NO_X$ mitigation are expected. EPA seeks comment on these uniform technologies and their representative cost thresholds for the purpose of quantifying EGU $NO_X$ reductions to reduce interstate ozone transport for the 2008 ozone NAAQS (Comment C–7).

The tables below summarize the emission reduction potentials (in absolute ozone season tonnages) from these technologies across the 12-state region. Table VII.C.1–2 focuses on near-term mitigation technologies while Table VII.C.1–3 includes mitigation technologies with extended time frames for implementation.

TABLE VII.C.1–2—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2021

| State | Baseline 2021 OS $NO_X$ | Reduction potential (tons) at various representative marginal cost * | | |
|---|---|---|---|---|
| | | SCR optimization ($1600 per ton) | SCR optimization + LNB upgrade ($1600 per ton) | SCR/SNCR optimization + LNB upgrade ($3900 per ton) |
| Illinois | 9,688 | 243 | 243 | 602 |
| Indiana | 15,856 | 3,356 | 3,388 | 3,821 |
| Kentucky | 15,588 | 1,204 | 3,652 | 3,762 |
| Louisiana | 15,488 | 86 | 617 | 1,255 |
| Maryland | 1,565 | 43 | 68 | 225 |
| Michigan | 13,893 | 1,166 | 2,126 | 2,351 |
| New Jersey | 1,346 | 92 | 92 | 89 |
| New York | 3,187 | 50 | 50 | 149 |
| Ohio | 15,832 | 6,227 | 6,227 | 6,350 |
| Pennsylvania | 11,570 | 3,494 | 3,494 | 3,779 |
| Virginia | 4,592 | 48 | 520 | 663 |
| West Virginia | 15,165 | 1,479 | 2,352 | 2,719 |
| Total | 123,770 | 17,489 | 22,829 | 25,765 |

* EPA shows reduction potential from state-of-the-art LNB upgrade as a near-term reduction technology but explains in section VII.B and VII.D that this reduction potential would not be implemented until 2022. Sum of state values may vary slightly from total due to rounding.

TABLE VII.C.1–3—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2025

| State | Baseline 2025 OS $NO_X$ | Reduction Potential (tons) at various representative marginal cost levels * | | | |
|---|---|---|---|---|---|
| | | SCR optimization + LNB upgrade ($1600 per ton) | SCR/SNCR optimization + LNB upgrade ($3,900 per ton) | SCR/SNCR optimization + LNB upgrade + * SNCR retrofit ($5,800 per ton) | SCR/SNCR optimization + LNB upgrade + * SCR retrofit ($9,600 per ton) |
| Illinois | 8,478 | 201 | 540 | 1,104 | 1,452 |
| Indiana | 12,755 | 3,308 | 3,665 | 3,973 | 4,490 |
| Kentucky | 15,588 | 3,652 | 3,762 | 5,088 | 6,736 |
| Louisiana | 15,488 | 617 | 1,255 | 1,494 | 2,852 |
| Maryland | 1,565 | 68 | 225 | 225 | 326 |
| Michigan | 10,841 | 1,228 | 1,439 | 2,300 | 3,527 |
| New Jersey | 1,346 | 92 | 89 | 89 | 89 |
| New York | 3,169 | 50 | 149 | 149 | 149 |
| Ohio | 15,917 | 6,240 | 6,369 | 6,369 | 6,791 |
| Pennsylvania | 11,570 | 3,494 | 3,779 | 3,922 | 3,992 |

[120] The cost assessment for new SNCR is available in the EGU $NO_X$ Mitigation Strategies TSD.

TABLE VII.C.1–3—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2025—Continued

| State | Baseline 2025 OS $NO_X$ | Reduction Potential (tons) at various representative marginal cost levels * | | | |
|---|---|---|---|---|---|
| | | SCR optimization + LNB upgrade ($1600 per ton) | SCR/SNCR optimization + LNB upgrade ($3,900 per ton) | SCR/SNCR optimization + LNB upgrade + * SNCR retrofit ($5,800 per ton) | SCR/SNCR optimization + LNB upgrade + * SCR retrofit ($9,600 per ton) |
| Virginia | 3,912 | 517 | 658 | 658 | 890 |
| West Virginia | 13,407 | 1,596 | 1,960 | 1,960 | 3,838 |
| Total | 114,035 | 21,064 | 23,891 | 27,332 | 35,133 |

* Both tables C.1–2 and C.1–3 include limited generation shifting (reflecting that which would occur at the price level consistent with control operation). It does not factor in generation shifting reduction potential that may be attributable to incremental new builds or incremental retirements. Sum of state values may vary slightly from total due to rounding.

As discussed in section VII.B.1.e, in prior actions, EPA has noted 39–48 months as an appropriate implementation timeframe for regionwide actions when EPA is evaluating multiple installations at multiple locations. The start of the 2024 ozone-season would only allow approximately 36 months from the effective date of this rule for post combustion controls to be regionally installed and operating. The 2025 ozone season represents a period approximately 48 months after EPA anticipates taking final action on this proposal and reflects a more demonstrably possible window for making retrofits on a regional scale. Therefore, EPA proposes that 2025 is the earliest ozone season by which new SNCR or SCR may be installed across multiple EGUs on a regional basis.

Installing new SCR or SNCR controls for EGUs generally involves the following steps: Conducting an engineering review of the facility to determine suitability and project scope; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit. These timeframes are intended to accommodate a plant's need to conduct an engineering assessment of the possible $NO_X$ mitigation technologies necessary to then develop and send a bid request to potential suppliers. Control specifications are variable based on individual plant configuration and operating details (*e.g.,* operating temperatures, location restrictions, and ash loads). Before making potential large capital investments, plants need to complete these careful reviews of their system to inform and develop the control design they request. They then need to solicit bids, review bid submissions, and award a procurement contract—all before construction can begin.

Scheduled curtailment, or planned outage, for pollution control installation would also be necessary to complete SCR or SNCR projects on a regional scale. Given that peak demand and rule compliance would both fall in the ozone season, sources would likely need to schedule installation projects for the ''shoulder'' seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone season compliance requirements are not in effect. If multiple units were under the same timeline to complete the retrofit projects as soon as feasible from an engineering perspective, this could lead to bottlenecks of scheduled outages as each unit attempts to start and finish its installation in roughly the same compressed time period. Thus, any compliance timeframe that would assume installation of new SCR or SNCR controls should be developed to reasonably encompass multiple shoulder seasons to accommodate scheduling of curtailment for control installation purposes and better accommodate the regional nature of the program.[121]

Finally, the time lag observed between the planning phase and in-service date of SCR operations in certain cases also illustrates that site-specific conditions can lead to installation times of four years or longer—even for individual power plants. For instance, SCR projects for units at the Ottumwa power plant (Iowa), Columbia power plant (Wisconsin), and Oakley power plant (California) were all in the planning phase in 2014. By 2016, these projects were under construction with estimated in-service dates of 2018.[122] Further, large-scale projects also illustrate that timelines can extend beyond the general estimate for a single power plant when the project is part of a larger, multifaceted air pollution reduction goal. For instance, the Big Bend power plant in Florida completed a multifaceted project that involved adding SCRs to all four units as well as converting furnaces, over-fire air changes, and making windbox modifications, during which a decade elapsed between the initial planning stages and completion.[123]

EPA notes that differences between these control technologies exist with respect to the potential viability of achieving cost-effective, regional $NO_X$ reductions from EGUs. SCR controls generally achieve greater EGU $NO_X$ reduction efficiency (up to 90 percent) than SNCR controls (25 percent). EPA observes that for the remaining uncontrolled coal fleet in the 12 states, SCRs are, on average, more expensive on a cost per ton basis. However, the analysis in the $NO_X$ Mitigation Strategies Proposed Rule TSD notes that the cost range varies widely for units depending on inlet $NO_X$ rate and capacity factor. Therefore, for some units, it is possible that SCR retrofit costs are lower than SNCR costs on a cost per ton basis. Moreover, there are a host of other market and policy drivers that may lead a specific unit to prefer a

[121] The workforce disruption experienced at the onset of the COVID–19 pandemic has resulted in a backlog of scheduled outages for power plant maintenance. According to Genscape, PJM (a regional transmission organization covering a substantial portion of the EGUs affected by this rule) observed a shortfall of more than a quarter of planned outages for power plant maintenance in the spring 2020 shoulder season. Finn, Pat; Szumloz, Zach; Gordon, Elliot. *Impacts of the Coronavirus on the PJM Power Market, Taking a Closer Look at Demand, Supply, Energy Prices, and Congestion. Genscape, A Wood Mackenzie Business. April 2020.*

[122] 2014 EIA Form 860. Schedule 6. Environmental Control Equipment.

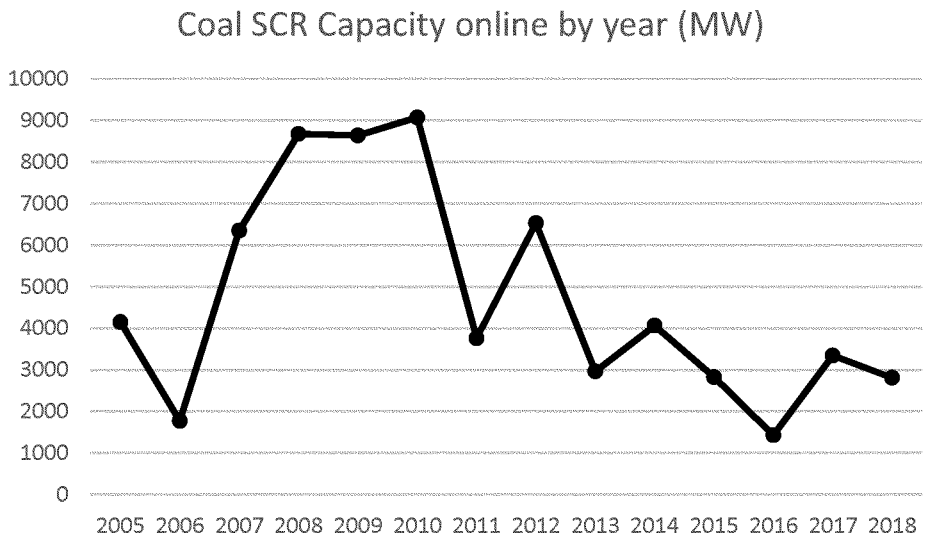
[123] Big Bend's Multi-Unit SCR Retrofit. Power Magazine. March 1, 2010. Available at *http://www.powermag.com/big-bends-multi-unit-scr-retrofit/.*

SCR retrofit over a SNCR retrofit. As a result, EPA believes it is reasonable to allow sufficient time for EGU operators to assess whether either an SNCR or an SCR would be an appropriate post-combustion control technology choice in response to a multi-state emission control program with the flexibility of interstate allowance trading. To allow for that potential determination, EPA is using an SCR-inclusive planning and installation schedule to represent new post-combustion retrofit potential on a regional basis (be it SNCR or SCR as determined by individual EGU owners under our flexible market-based emission trading program).

Furthermore, SNCR installation at an individual source would render later installation of an SCR less cost-effective, because such a unit would have already expended some unrecoverable capital on the less-effective pollution control technology. As a result, it would be counterproductive to assume EGUs should install the less effective SNCR technology to address a short-run air quality concern under an older and less stringent NAAQS when it may later prove necessary to require the more effective SCR technology to address longer-run air quality concerns under a more stringent NAAQS for the same pollutant. Considering these factors, EPA believes it is appropriate to give particular weight to the timeframe required for implementation of SCR across the region as compared to SNCR to allow sources the flexibility to make the most efficient post-combustion control investment. Historically, units have chosen to retrofit with higher performing SCR at a much greater rate than they have chosen SNCR. For SCR, the total time associated with project development is estimated to be up to 39 months for an individual power plant installing controls on more than one boiler. However, more time is needed when considering installation timing for new SCR controls regionally. EPA has previously determined that a minimum of 48 months (four years) is a reasonable time period to allow to complete all necessary steps of SCR projects at EGUs on a regional scale. This timeframe would allow for regional implementation of these controls (*i.e.,* at multiple power plants with multiple boilers) considering the necessary stages of post-combustion control project planning, shepherding of labor and material supply, installation, coordination of outages, testing, and operation.[124]

In addition to its engineering assessment, EPA looked at historical data to validate this 39–48 month installation timeframe. EPA observed over 12 GW of uncontrolled coal capacity in the linked states covered in this rule. For comparison, EPA looked at the last 15 years of data to see if a similar amount of capacity had come online in a shorter time frame. It observed that it had not. Most notably, the CAIR was finalized in March of 2005 covering much of the Eastern U.S. and drove significant SCR retrofit activity, with incentives for early installation and reductions. From this date, 39–48 months would have placed the SCRs online in the mid 2008 to 2009 time frame. The graphic below illustrates an uptick in coal-fired capacity retrofitted with SCRs in response to the rule (Figure VII.D.2). Most of this capacity comes online in 2009 and 2010. Although EPA data on when sources started planning these controls and whether it was driven purely by CAIR or other factors is not perfect, it finds the chart below consistent with its determination that a 39–48 month time frame is reasonable for SCR retrofit possibility on a regional level.

**Figure 1 to section VII.C.- SCR Capacity (MW) as a Function of Online Year.**




2. Non-EGU Emission Reduction Potential by Cost Threshold

EPA performed a similar analysis of reduction potential for the non-EGU mitigation technologies identified, as discussed in section VII.B.2 of this notice. EPA identified two tranches of controls for non-EGU emissions sources associated with two levels of weighted average cost per ton. EPA's assessment of emission reduction potential from the controls in these tranches reflects significant uncertainty resulting from the current information available to the Agency. Because information for existing controls on non-EGU emissions sources is missing in the 2016 base year

[124] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), available at *https://nepis.epa.gov/Adobe/PDF/P1001G0O.pd.*

inventory for some states and incomplete for some sources, EPA went through a process to further verify existing control information and refine the $NO_X$ emission reduction potential estimated by CoST, the CMDb, and the 2023 projected inventory. Because of the data- and research-intensive nature of the process, this verification process focused on a subset of the 12 linked states, where the control measures applied resulted in the greatest potential air quality impact. The steps EPA took, discussed in more detail below, include:

- Considered the air quality impacts by state and focused on upwind states with the largest estimated potential air quality impacts from potential non-EGU emission reductions;
- Assumed that the potential reductions in tranche one were potentially cost-effective because tranche one's weighted average cost of $2,000 per ton is similar to the proposed control stringency for EGUs represented by $1,600 per ton (see section VII.D.1);
- Looked at potential emissions reductions in tranche one that were estimated to cost less than $2,000 per ton; and
- For those potential reductions in tranche one that were estimated to cost less than $2,000 per ton, reviewed online facility permits and industrial trade literature to verify and determine if the estimated emissions reductions may be actual, achievable emissions reductions.

First, to narrow the number of states for which the Agency verified existing control information and refined the $NO_X$ emission reduction estimates the Agency considered the potential air quality impacts by state and focused the assessment on the upwind states with the largest estimated potential air quality impacts: Indiana, New York, Ohio, Pennsylvania, and West Virginia.[125] EPA identified these states using an estimate of 0.02 ppb as a threshold for air quality improvement that may be obtained from reductions from non-EGUs in each state. The Agency is not applying a 0.02 ppb impact threshold as a step in the step 3 multi-factor test. Rather, this threshold value allowed the Agency to better target its efforts toward the potentially effective states for non-EGU $NO_X$ emissions reductions. For additional discussion on the air quality impacts by state, see the section titled *Air Quality Impacts from Potential Non-EGU Emissions Reductions* in the technical memorandum titled *Assessing Non-EGU Emission Reduction Potential* in the docket for this proposed rule.

Next, to narrow the set of emissions sources in those states for which EPA would verify existing control information and refine the $NO_X$ emission reduction estimates, the Agency assumed that the potential reductions in tranche one were potentially relatively cost-effective because tranche one's weighted average cost of $2,000 per ton is similar to the proposed control stringency for EGUs represented by $1,600 per ton (see section VII.D.1).

Next, EPA looked at potential emissions reductions in tranche one that were estimated to cost less than $2,000 per ton. Before refining the emission reduction estimates in tranche one, the total estimated emissions reductions for the non-EGU sources in Indiana, New York, Pennsylvania, and Ohio are 7,556 ozone season tons. The estimated emissions reductions in tranche one in those states that cost less than $2,000 per ton are 6,346 ozone season tons, or 84 percent of the total. Note that no potential emissions reductions at a cost of less than $2,000 per ton were identified in West Virginia because CoST originally estimated control costs for two IC engines in West Virginia inappropriately, and CoST did not identify likely cost-effective controls for any other non-EGU emissions units in the state. EPA removed the two IC engines in West Virginia from further consideration because the corrected potential cost was greater than $2,000 per ton. In reviewing the potential controls in tranche one that were estimated to cost less than $2,000 per ton for Indiana, New York, Pennsylvania, and Ohio, EPA found that these reductions were from SCR applied to glass furnaces and SNCR applied to cement kilns.

Next, to verify the information on the application of these controls and estimated emissions reductions, EPA reviewed facilities' online title V permits and industrial trade literature for the likely cost-effective emissions reductions associated with SCR applied to glass furnaces and SNCR applied to cement kilns. Of the 20 emissions units in Indiana, New York, Pennsylvania, and Ohio included in the cost analysis, source permits identified that 10 units (i) already have controls and monitors (primarily CEMS), (ii) are installing controls and CEMS or consolidating operations in the next few years as a result of recent consent decrees issued as part of EPA's New Source Review Air Enforcement Initiative, (iii) have shut down, or (iv) are planning to shut down by 2023. The results of the online permit review and review of industrial trade literature, summarized in Table VII.C.2–1 below, suggest that approximately 14 percent of the CoST-estimated potential emissions reductions in these four states may be possible to achieve. EPA expects that the controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region affected by this proposed rule. Therefore, based on the information available to us at this time, EPA believes that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could likely be installed. For additional details on the review of online permits and industrial trade literature, please see the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this proposed rule.

TABLE VII.C.2–1—STATUS OF POTENTIAL EMISSIONS REDUCTIONS

| | Number of emissions units | OS tons | (Percent of total) |
|---|---|---|---|
| Shutdowns | 4 | 824 | 13 |
| Lehigh Cement—Kiln Replacements | 3 | 366 | 6 |
| NEI Discrepancy/Uncertain [126] | 1 | 3,286 | 51 |
| Already Controlled/Uncertain | 5 | 967 | 15 |

[125] There were no potential $NO_X$ emissions reductions from New Jersey because the projected 2023 emissions inventory did not include non-EGU point sources in New Jersey with pre-control $NO_X$ emissions greater than 150 tpy for which the Agency had applicable control measures.

[126] In the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* the section titled *Conclusions of Verification and Review of Controls on Non-EGU Sources in Four States and Potential Emissions Reductions* includes a discussion related to the underlying uncertainty in these estimates of emissions reductions. The sources of uncertainty are related to future emissions estimates, a possible June 2020 unit shut down, and a unit that may already be controlled.

TABLE VII.C.2–1—STATUS OF POTENTIAL EMISSIONS REDUCTIONS—Continued

| | Number of emissions units | OS tons | (Percent of total) |
|---|---|---|---|
| Possible Emissions Reductions | 7 | 903 | 14 |
| TOTAL | 20 | 6,346 | |

EPA has also previously examined the time necessary to install the controls indicated in the table above (with details on the technology tranches) for different industries. The 2016 CSAPR Update Non-EGU TSD provided preliminary estimates of installation times for a variety of $NO_X$ control technologies applied to a large number of sources in non-EGU industry sectors.[127] For virtually all $NO_X$ controls applied to cement manufacturing and glass manufacturing, information on installation times was not available to provide an estimate, and that the installation time for these controls was ''uncertain.'' There was an exception for SNCR applied to cement kilns; however, the installation time estimate of 42–51 weeks listed in the CSAPR Update Non-EGU TSD does not account for implementation across multiple sources, the time needed to have $NO_X$ monitoring installed, and other steps in the permitting and construction processes.

To improve upon information from the CSAPR Update Non-EGU TSD on installation times for SCR on glass furnaces and SNCR on cement kilns, EPA reviewed information from permitting actions and a consent decree. For two glass manufacturing facilities that installed SCR on glass furnaces, from the time of permit application to the time of SCR operation was approximately 19 months for one facility and is currently at least 20 months for another facility.[128] These installation times do not reflect time needed for pre-construction design and engineering, financing, and factors associated with scaling up construction services for multiple installations at several emissions units. With respect to cement kilns, an April 2013 consent decree between EPA and CEMEX, Inc. required installation of SNCR at a kiln within 450 days, or approximately 15 months, of the effective date of the consent decree. Similarly, this installation time does not reflect time associated with scaling up construction services for multiple control installations at several emissions units.

This information and EPA's general experience indicate that a two-year installation timeframe for a rule requiring installation of new control technologies across a variety of emissions sources in several industry sectors on a regional basis is a relatively fast installation timeframe. A shorter installation timeframe of approximately one year (*i.e.,* in time for the 2022 ozone season) would raise significant challenges for sources, suppliers, contractors, and other economic actors, potentially including customers relying on the products or services supplied by the regulated sources.[129]

Thus, for purposes of this proposed rule, EPA estimates that these controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region; therefore, based on the information available, EPA proposes that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could likely be installed.

### *D. Assessing Cost, EGU and Non-EGU $NO_X$ Reductions, and Air Quality*

To determine the emissions that are significantly contributing to nonattainment or interfering with maintenance, EPA applied the multi-factor test to EGUs and non-EGUs separately, considering for each the relationship of cost, available emission reductions, and downwind air quality impacts. Specifically, EPA determined the appropriate level of uniform $NO_X$ control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. EPA also evaluated possible over-control by determining if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if an upwind state could have reduced its emissions below the 1 percent air quality contribution threshold at a lower cost threshold.

#### 1. EGU Assessment

For EGUs, EPA examined the impacts of each EGU cost threshold identified in section VII.C.1 on the air quality at downwind receptors. Specifically, EPA identified the projected air quality improvement relative to the base case, as well as whether the air quality improvements are sufficient to shift the status of receptors from nonattainment to maintenance or from maintenance to clean. Combining these air quality factors, cost, and emission reductions, EPA identified a control strategy for EGUs at a stringency level that maximizes cost-effective emission reductions. This control strategy reflects the optimization of existing SCR controls and installation of state-of-the-art $NO_X$ combustion controls, with an estimated marginal cost of $1,600 per ton. EPA's evaluation also shows that emission budgets reflecting the $1,600 per ton cost threshold do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at step 1 or the 1 percent contribution threshold that triggers further evaluation at step 2 of the 4-step framework for the 2008 ozone NAAQS. To assess downwind air quality impacts for each nonattainment and maintenance receptor identified in section VI.C, EPA evaluated the air quality change at that receptor expected from the progressively more stringent upwind EGU control stringencies that

[127] The CSAPR Update Non-EGU TSD is available on EPA's website at the following link: *https://www.epa.gov/airmarkets/assessment-non-egu-NOx-emission-controls-cost-controls-and-time-compliance-final-tsd.*

[128] Cardinal FG Company submitted a permit application to the Wisconsin Department of Natural Resources (WIDNR) to construct an SCR in December 2017 at a facility in Portage, Wisconsin. The SCR was expected to be ready for testing in mid-July 2019. In addition, Cardinal FG Company submitted a permit application to the WIDNR to construct an SCR in January 2019 at a facility in Menomonie, Wisconsin. The SCR is currently not operational.

[129] We note that in several places, the CAA itself indicates a general congressional expectation that the retrofit of emissions controls onto existing sources across diverse industry sectors and at a regional or national scale may take at least several years. For instance, under CAA section 112(i)(3), Congress allowed for up to three years for compliance with control requirements in national rules for hazardous air pollutants for existing sources. And under CAA section 169A(g)(4), Congress established up to five years for the installation of best available retrofit technology (BART) for over two-dozen source categories. While these provisions also call for installation ''as expeditiously as practicable,'' we note that both of these timeframes are longer than the two-year estimate EPA proposes to use in this rulemaking.

were available for that time period. This assessment provides the downwind ozone improvements for consideration and provides air quality data that is used to evaluate potential over-control.

To assess the air quality impacts of the various control stringencies, EPA evaluated changes resulting from the application of the emissions reductions at the cost thresholds to states that are linked to each receptor as well as the state containing the receptor. By applying the cost threshold to the state containing the receptor, EPA assumes that the downwind state will implement (if it has not already) an emissions control strategy for their sources that is of the same stringency as the upwind control strategy identified here. Consequently, EPA explicitly ensures that it is accounting for the downwind state's fair share (which is a part of the overcontrol evaluation).[130]

For states that were not linked to that receptor, the air quality change at that receptor was evaluated assuming emissions equal to the engineering analytics base case emission level. This method holds each upwind state responsible for its fair share of the specific downwind problems to which it is linked. For states that are not linked to that receptor (even if they are linked to a different receptor), EPA assumes that they are not making emission reductions beyond those in the base case to that receptor. In practice, because these states, by definition, do not impact such receptors above the contribution threshold, the changes in emissions have little to no effect on the non-linked receptor. Furthermore, if EPA were to explicitly consider these reductions within the framework, it would introduce interdependency into the solution for significant contribution. The state-and-receptor-specific definition of significant contribution would devolve into a simultaneous regional action, where particular states would have to either ''go first'' or where non-linked states would shoulder burdens to receptors to which they are not linked while other linked states would do less. In any case, EPA has verified that even if it were to account for non-linked state reductions under the selected control stringency, the changes in concentrations at the receptors are so small that they do not affect the attainment or maintenance status of any receptor.

For this assessment, EPA used an ozone air quality assessment tool (ozone AQAT) to estimate downwind changes in ozone concentrations related to upwind changes in emission levels. EPA used this tool to analyze the years for which downwind nonattainment and maintenance problems persist for the 2008 ozone NAAQS. Under the base case, EPA projects that such air quality problems persist through 2025. Therefore, EPA focused its assessment on the years 2021 through 2025.

This tool is similar to the AQAT tool used in the CSAPR Update to evaluate changes in ozone concentrations. The ozone AQAT uses simplifying assumptions regarding the relationship between each state's change in $NO_X$ emissions and the corresponding change in ozone concentrations at nonattainment and maintenance receptors to which that state is linked. This method is calibrated using two CAMx air quality modeling scenarios that fully account for the non-linear relationship between emissions and air quality associated with atmospheric chemistry. The two CAMx modeling scenarios are the 2016 base year and the 2023 fh1 future year scenarios for the 2021 time period. For the 2024 and 2025 AQAT simulations, the two CAMx modeling scenarios are the 2023 fh1 future year and the 2028 fh1 scenario. See the Ozone Transport Policy Analysis Proposed Rule TSD for additional details.

For each EGU cost threshold, EPA first evaluated the magnitude of the change in ozone concentrations at the nonattainment and maintenance receptors for each relevant year. EPA next evaluated whether the estimated change in concentration would resolve the receptor's nonattainment or maintenance concern by lowering the average or maximum design values below 76 ppb, respectively. For a complete set of estimates, see the Ozone Transport Policy Analysis Proposed Rule TSD or the ozone AQAT excel file.

In 2021, there are two nonattainment receptors and two maintenance receptors (see section VI.C for details). EPA evaluated the air quality improvements at the four receptors at the two EGU cost threshold levels that are available in the near-term (*i.e.,* $1,600 per ton and $3,900 per ton).[131] EPA found that the average air quality improvement at the four receptors relative to the engineering analytics base case was 0.19 ppb at $1,600 per ton and 0.23 ppb at $3,900 per ton (see Table VII.D.1–2). EPA found that the Westport receptor (090019003) remains nonattainment at all cost levels, the Stratford receptor (090013007) switches from nonattainment to maintenance at $1,600 per ton (*i.e.,* its average DV becomes clean but its maximum DV remains above the NAAQS), while the Houston receptor (482010024) remains maintenance at all levels. Lastly, the New Haven receptor has all nonattainment and maintenance resolved in the engineering analytics base case. For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and to the Ozone AQAT included in the docket.

TABLE VII.D.1–1—AIR QUALITY AT THE FOUR RECEPTORS IN 2021 AT VARIOUS COST THRESHOLDS

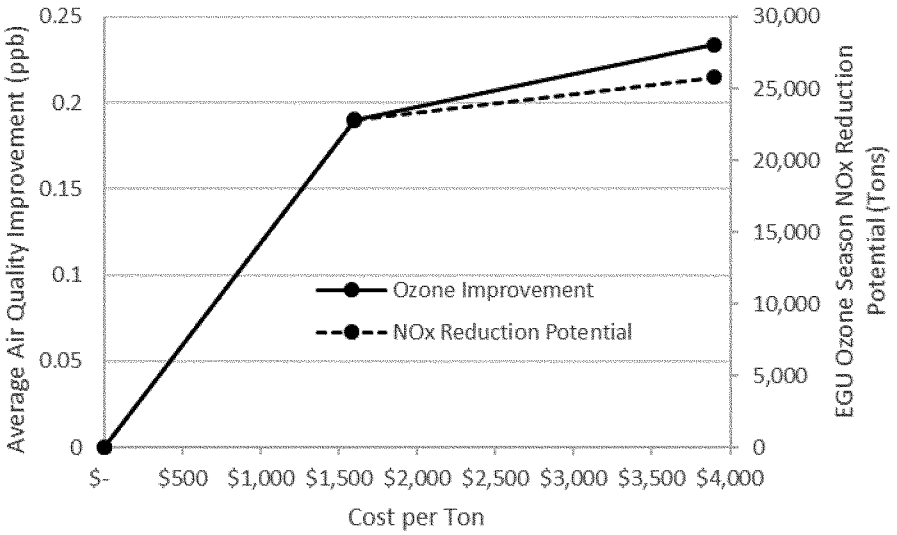
| Monitor ID No. | State | County | Baseline | $1,600/ton | $3,900/ton | Baseline | $1,600/ton | $3,900/ton |
|---|---|---|---|---|---|---|---|---|
| | | | Average DV (ppb) | Average DV (ppb) | Average DV (ppb) | Max DV (ppb) | Max DV (ppb) | Max DV (ppb) |
| 90013007 | Connecticut | Fairfield | 76.10 | 75.88 | 75.86 | 77.02 | 76.80 | 76.78 |
| 90019003 | Connecticut | Fairfield | 78.26 | 78.08 | 78.06 | 78.56 | 78.39 | 78.37 |
| 90099002 | Connecticut | New Haven | 73.56 | 73.32 | 73.29 | 75.72 | 75.47 | 75.44 |
| 482010024 | Texas | Harris | 75.61 | 75.49 | 75.39 | 77.25 | 77.12 | 77.02 |
| Average AQ Improvement Relative to Base (ppb) | | | 0.00 | 0.19 | 0.23 | | | |

[130] This step is irrelevant in the analysis for the Connecticut receptors because that state shows no EGU reduction potential from the EGU control optimization or retrofit technologies identified given its already low-emitting fleet.

[131] The $1,600 per ton cost threshold level includes full implementation of mitigation technologies available at that level (SCR optimization and state-of-the-art combustion controls).

Figure 1 illustrates the air quality improvement relative to the marginal cost per control technology for the controls associated with the near-term cost thresholds of $1,600 per ton and $3,900 per ton. EPA combines costs, EGU $NO_X$ reductions, and corresponding improvements in downwind ozone concentrations, which results in a ''knee-in-the-curve'' graph, with the ''knee'' at a point where emission budgets reflect a control stringency with an estimated marginal cost of $1,600 per ton. This level of stringency in emission budgets represents the level at which incremental EGU $NO_X$ reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other emission budget levels evaluated. The more stringent emission budget levels (*e.g.,* emission budgets reflecting $3,900 per ton or greater) yield fewer additional emission reductions and fewer air quality improvements relative to the increase in control costs. This evaluation shows that EGU $NO_X$ reductions are available at reasonable cost and that these reductions can provide improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors.

**Figure 1 to section VII.D.1 - EGU Ozone Season $NO_X$ Reduction Potential in 12 Linked States and Corresponding Total Reductions in Downwind Ozone Concentration at Nonattainment and Maintenance Receptors for each Cost Threshold Level Evaluated (2021/2022)***




*Note – this figure reflects full implementation of $1600 per ton (SCR optimization + state-of-the-art combustion control upgrade)

EPA proposes that the $1,600 per ton level control strategy, associated with optimizing existing SCRs and ensuring that state of the art combustion controls have been fully installed or upgraded, is a relatively highly cost-effective level of control (reflected as being the ''knee-in-the-curve''), and should therefore be required to address significant contribution in the 12 linked states. EPA observes this $1,600 per ton level of stringency results in a substantial number of emissions reductions totaling nearly 23,000 tons (19 percent of the baseline level), resulting in all downwind air quality problems for the 2008 ozone NAAQS being resolved after 2024 (one year earlier than the base case). There are also projected changes in receptor status (from projected nonattainment to maintenance-only) for the Stratford and Westport receptors (the first in 2021, the second in 2024). In addition, the Houston receptor changes from maintenance to attainment in 2023. In 2021, the average level of improvement in ozone concentrations at all four of the receptors is 0.19 ppb.

By comparison, the next, more stringent mitigation technology available in 2021 (*i.e.,* SNCR optimization at $3,900 per ton) yields incremental emission reductions of approximately only 3,000 tons. This has a much smaller average air quality improvement of just 0.04 ppb in 2021. Further, this smaller benefit comes at a substantial increase in marginal costs. Moreover, analysis using the AQAT tool suggests this strategy had no further impact on receptors' status. EPA examined the total number of SNCR-controlled coal units in the 12 linked states. A small portion of the coal fleet had this technology in place (14 percent), and of that small portion, the majority of the units with these SNCR controls had emission rates of 0.13 lb/mmBtu or less (many operating less than 0.1 lb/mmBtu), suggesting they were already optimizing their SNCRs. Given the small portion of the coal fleet covered by this technology in the 12 linked states, combined with the

relatively low emission rate on average suggesting ongoing control operation, EPA observed few additional reductions. Given the cost, available reductions, and corresponding air quality improvement, EPA proposes to determine that the potential emission reductions associated with a control strategy of optimizing existing SNCR are not required to eliminate significant contribution from the 12 linked states under the 2008 ozone NAAQS.

Controls associated with the above strategies are implementable by the 2021 ozone season (or in the case of upgraded or new combustion controls, by the 2022 ozone season; see the discussion in section VII.C and in the $NO_X$ Mitigation Strategies TSD for details). Thus, as to the 2021 and 2022 ozone seasons these are the only control strategies for EGUs that EPA is assessing for this timeframe because they are the only ones that are possible. *See Wisconsin,* 938 F.3d at 320.

As discussed above in Section VII.C, EPA estimates that the time necessary to install new SNCR or new SCR controls (represented by $5,800 per ton and $9,600 per ton) on a regional basis across multiple EGUs is approximately 39 to 48 months. While a single new SNCR may be installed within 16 months, for the reasons explained in Section VII.C, a time frame that encompasses the ability for a unit to make a unit-specific choice of what post-combustion control (SCR or SNCR) is best for its configuration and future operating plans is appropriate. Therefore, the timing estimate for SNCR and SCR is considered together and the 39–48 month time frame for SCR installation is the most appropriate time period to use for assessing post-combustion controls. Assuming a final rule in the spring of 2021, this means that these controls could not be operational prior to the 2024 ozone-season, and therefore the reduction potential is not available until the 2025 ozone season. According to EPA's air quality assessment, there are no remaining air quality receptors in 2025 assuming a $1,600 per ton control strategy for EGUs is already in place in the 12 linked states. Therefore, it is not necessary to require emission controls that can only be operational at a point in time when EPA's projections demonstrate there is no remaining interstate transport problem.

EPA is requesting comment on this proposal's determination that new post-combustion controls (SCR or SNCR) are not possible to implement on a regional basis by the start of the 2024 ozone season (Comment C–8). In the event that updated analysis, either via public comments or other information, shows that post-combustion controls may be possible across multiple EGUs on a regional basis before the 2024 ozone season, EPA requests comment on whether the emission reduction potential of new post-combustion controls (SCR or SNCR) at EGUs, on a regional basis, may constitute significant contribution to nonattainment and/or interference with maintenance (Comment C–9). EPA anticipates that such analysis would be applied to the foreseeable circumstances of downwind receptors under the 2008 ozone NAAQS and would require assessment under the multi-factor test set forth in this section (as applied to other emission control strategies). This includes an analysis of cost, emission reduction potential, and downwind air quality impacts. EPA also believes that the degree of nonattainment or maintenance problem anticipated at downwind receptors at the time such controls are purported possible would be a relevant consideration.

2. Non-EGU Assessment

The Agency used CoST and the 2023 projected inventory to identify uncontrolled emissions sources or units and applied controls to emissions units with 150 tpy or more of pre-control $NO_X$ emissions, which is an emissions threshold comparable to 25 MW for EGUs. EPA categorized the CoST results by the control technologies, calculated a weighted average cost per ton (in 2016$) for emissions reductions associated with each technology, and identified two tranches of potential reductions based on estimated cost effectiveness (for details see Section VII.B.2). EPA took a series of steps to further verify and refine the $NO_X$ emission reduction potential estimated by CoST, the CMDb, and the 2023 projected inventory and found that the cost-effective emissions reductions in tranche one were from SCR applied to glass furnaces and SNCR applied to cement kilns. These controls could likely take 2–4 years to install; therefore, at the time of this proposal, EPA does not believe these non-EGU controls can be installed prior to the 2023 ozone season (for details see Section VII.C.2).

Using 2023 as the potential earliest date by which controls for glass furnaces and cement kilns can be installed, EPA assessed whether these emission reduction strategies should be required at Step 3 under its multi-factor test. First, the Agency extended the findings for glass furnaces and cement kilns from the five states for which the Agency refined the data—Pennsylvania, New York, Ohio, Indiana, and West Virginia—to the five other states linked to an air quality receptor in 2023—Michigan, Illinois, Kentucky, Virginia, and Maryland.[132] For the other five states, because the Agency was not able to verify the existing control information or refine the emission reduction potential through the online permit and trade literature review in the time available, the Agency conservatively assumed that all of the CoST-estimated emissions reductions were real emissions reductions. Combining the results from the refined assessment for five states with the assumption that all of the reductions from the other five states are real emissions reductions, EPA estimated that across the 11 states linked to the remaining receptor in Connecticut in 2023 (Westport), the available emissions reductions from tranche one at less than $2,000 per ton are 1,567 ozone season tons.[133] Using AQAT, EPA assessed whether this level of emissions reductions would have a meaningful effect on the Connecticut receptor. EPA found that the total improvement in air quality from these emissions reductions is 0.03 ppb. This potential air quality improvement is an order of magnitude less than the air quality improvement EPA expects to obtain from the comparable $1,600 per ton control strategy for EGUs in 2023, which is estimated to improve air quality at the remaining Connecticut receptor by 0.30 ppb. Based on this assessment, then the Agency proposes under the multi-factor test that even the potentially most cost-effective reductions from non-EGU sources (*i.e.,* those below $2,000 per ton in tranche one) do not rise to the level of ''significance'' that would justify mandating them under the good neighbor provision for the 2008 ozone NAAQS. As discussed in more detail in its request for comments below, because of EPA's relatively incomplete and

[132] Louisiana is excluded from this analysis because the Houston, Texas receptor to which it is linked is projected to be neither a nonattainment nor a maintenance receptor by the 2023 ozone season based on the CAMx modeling with IPM emissions. In addition, New Jersey is not included because there were no potential $NO_X$ emissions reductions from New Jersey because the projected 2023 emissions inventory did not include non-EGU point sources in New Jersey with pre-control $NO_X$ emissions greater than 150 tpy for which the Agency had applicable control measures.

[133] The 1,567 ozone season tons is a total of 903 tons from Table VII.C.2.1 and 664 ozone season tons from the 5 states (Michigan, Illinois, Kentucky, Virginia, and Maryland) for which we did not conduct an online permit review and verify the estimated emissions reductions. The estimated 664 tons can be found in the Excel workbook titled *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States updated Modeling—No Replace—07-23-2020.xlsx* in the *SCR and SNCR Summary* worksheet.

uncertain datasets on which it based this proposed analysis, EPA encourages stakeholder comments on the analysis and proposed conclusion with respect to the tranche one non-EGU control strategies (Comment C–10).

Turning to tranche two, EPA believes the amount of time needed to install controls or retrofit the 111 non-EGU emissions units identified in tranche two likely extends beyond the 2021 Serious area attainment date; therefore, similar to tranche one, EPA assumes the installation times are no earlier than the 2023 ozone season. In tranche two, the weighted average cost of the estimated emissions reductions from non-EGU emissions sources ranges from $5,000 to $6,600 per ton. In the 11 linked states, the Agency identified approximately 11,100 tons of potential ozone season emissions reductions by applying layered combustion, NSCR (non-selective catalytic reduction) or layered combustion, and ultra-low $NO_X$ burners in combination with SCR to 111 emissions units in the oil and gas industry and several manufacturing industries. EPA did not further verify and refine these estimated emissions reductions and believes the estimate of available emission reductions could be lower because the inventory can be missing information on controls on existing emissions sources and CoST may be applying controls to already controlled sources. In Section VII.D.2.a below, EPA seeks comment on the feasibility of further controlling $NO_X$ from IC engines and large ICI boilers, including optimizing combustion and installing ultra-low $NO_X$ burners.

EPA's assessment is that, with the proposed control strategy for EGUs in place (see section VII.D.1.), there will no longer be any downwind receptors in 2025 with respect to the 2008 ozone NAAQS. Focusing then on whether there are any non-EGU $NO_X$ emissions reductions available to address significant contribution under the Step 3 multi-factor test in either the 2023 or 2024 ozone seasons, based on its assessment EPA proposes to conclude that any such potentially available reductions would not be justified. EPA's proposed assessment is that there is a relatively smaller quantity of $NO_X$ reductions that may be available from the non-EGU control strategies in tranches one and two in these years, across the 11 states linked to the remaining receptor. These control strategies are estimated to have a limited impact on further improving air quality at this receptor. As shown in the Ozone Policy Analysis TSD, the incremental effects of emission reductions from non-EGUs do not affect the status of any of the four receptors in any of the relevant years compared with the $1,600 per ton EGU policy scenario. For more information, refer to the Ozone Transport Policy Analysis Proposed Rule TSD. EPA therefore proposes to conclude that no emission reductions from non-EGU sources are necessary to eliminate significant contribution under the good neighbor provision for the 2008 ozone NAAQS.

a. Request for Comment on Non-EGU Control Strategies and Measures

Recognizing the limitations and uncertainties in the existing data on which EPA bases this proposal, EPA is requesting comment to assist in substantiating whether this assessment is fully supportable based on additional information and analyses not currently available to the Agency (Comment C–11). To develop a more complete record, EPA requests comment on a number of questions related to specific control strategies the Agency evaluated, and in particular seeks feedback and data from stakeholders with relevant expertise or knowledge. Should such additional information and analyses show that emissions reductions from non-EGU sources in the linked upwind states would be more cost-effective than what is included in EPA's current assessment, available for installation earlier than EPA estimates, or more impactful on downwind air quality than EPA's current information suggests, then the Agency remains open to the possibility of finalizing a rule requiring such controls as may be justified under the Step 3 multi-factor test.

EPA understands that the methodology employed was one approach to assessing emission reduction potential from non-EGU emissions sources or units and to determining an appropriate stringency level for non-EGU sources. In the time available, the Agency was not able to employ another methodology or conduct another assessment of other potential non-EGU control strategies or measures and verify the estimated emissions reductions in the same manner as it did for some of the tranche one states.

As indicated in Section VII.C.2 above, information about existing controls on non-EGU emissions sources in the inventory was missing for some states and incomplete for some sources. The approach EPA used in this proposal was to assess emission reduction potential using CoST and the projected 2023 inventory to identify emissions units that were uncontrolled. Given that EPA's assessment of any other $NO_X$ control strategies would also rely on CoST, the CMDb, and the inventory to identify emissions units that were uncontrolled and to assess emission reduction potential from non-EGU sources, the Agency believes such an assessment would likely lead to a similar conclusion that estimated emission reduction potential is uncertain.

As such, for this and future regulatory efforts, to improve the underlying data used in an assessment of emission reduction potential from non-EGU sources, EPA requests comments on: (i) The existing assessment of emission reduction potential from glass furnaces and cement kilns (Comment C–12); (ii) emission reduction potential from other control strategies or measures on a variety of emissions sources in several industry sectors (Comment C–13); and (iii) the feasibility of further controlling $NO_X$ from IC engines and large ICI boilers, including optimizing combustion and installing ultra-low $NO_X$ burners (Comment C–14). The three sections below introduce the areas for comment and describe workbooks generated by CoST, the CMDb, and the 2023 projected inventory with the underlying data to review for comment.

First, EPA requests comment on the aspects of the assessment presented above of emission reduction potential from the glass and cement manufacturing sectors (Comment C–15). To help inform review and comments, please see the following Excel workbooks available in the docket and referenced in the memorandum titled *Assessing Non-EGU Emission Reduction Potential:* (i) For a summary of the CoST run results *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—07–23–2020,* and (ii) for summaries of emissions reductions by control technologies, *Control Summary—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—05–18–2020.* Note that the *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—07–23–2020* Excel workbook includes a READ ME worksheet that provides details on the parameters used for the CoST run.

Specifically, EPA is soliciting comment on the following:

- Are applying SCR to uncontrolled or under-controlled glass furnaces and SNCR to uncontrolled or under-controlled cement kilns in the linked states feasible approaches to achieve cost-effective emissions reductions? If not, what types of cost-effective controls can be applied to these sources?
- Does EPA have the right and most up to date information on emissions and

existing control technologies for the units included in this assessment? If not, what is the correct and more up to date information?

• After looking at the underlying CoST run results, are the cost estimates accurate and reasonable? If not, what are more accurate cost estimates?

• What is the earliest possible installation time for SCR on glass furnaces?

• What is the earliest possible installation time for SNCR on cement kilns?

• For the non-EGU facilities without any emissions monitors, what would CEMS cost to install and operate? How long would CEMS take to program and install?

In addition to the assessment of emission reduction potential from the glass and cement manufacturing sectors, for the 12 linked states EPA attempted to summarize all potential control measures for emissions units with 150 tpy or more pre-control $NO_X$ emissions in 2023 in several industry sectors. This information illustrates that there are many potential approaches to assessing emissions reductions from non-EGU emissions sources or units. EPA used the Least Cost Control Measure worksheet from a CoST run.[134] By state for the 12 linked states and then by facility, this information is summarized in the Excel workbook titled *CoST Control Possibilities $10k 150 tpy cutoff 12 States Updated Modeling—06–30–2020,* also available in the docket and referenced in the memorandum titled *Assessing Non-EGU Emission Reduction Potential.*

Second, specifically EPA requests comment (Comment C–16) on the following:

• Other than glass and cement manufacturing, are there other sectors or sources that could achieve potentially cost-effective emissions reductions? What are those sectors or sources? What control technologies achieve the reductions? What are cost estimates and installation times for those control technologies?

• Are there other sectors where cost effective emission reductions could be obtained by, in lieu of installing controls, replacing older, higher emitting equipment with newer equipment?

• Are there sectors or sources where cost effective emission reductions could be obtained by switching from coal-fired units to natural gas-fired units?

• For non-EGU sources without emissions monitors, what would CEMS cost to install and operate? How long would CEMS take to program and install? Are monitoring techniques other than CEMS, such as predictive emissions monitoring systems (PEMS), sufficient for certain non-EGU facilities that would not be brought into a trading program? If so, for what types of non-EGU facilities, and under what circumstances, would PEMS be sufficient? What would be the cost to install and operate monitoring techniques other than CEMS?

Third, in the workbook titled *CoST Control Possibilities $10k 150 tpy cutoff 12 States Updated Modeling—06–30–2020* EPA included two worksheets with information on controls for ICI boilers and IC engines: (i) *Boilers—ULNB* and (ii) *IC Engines—LEC.* For the 12 linked states, EPA summarized CoST's application of ultra-low $NO_X$ burners (ULNB) on ICI boilers and low emission combustion (LEC) on IC engines. Assuming that the estimated emissions reductions from the application of these controls are real and cost-effective, there could be approximately 5,000 ozone season tons of emissions reductions from 52 ICI boilers and 8,000 ozone season tons of emissions reductions from 69 IC engines. This information is summarized in Table VII.D.2–1 below.

TABLE VII.D.2–1—SUMMARY OF POTENTIAL EMISSIONS REDUCTIONS FROM ULNB ON ICI BOILERS AND LEC ON IC ENGINES

| | ICI boilers | IC engines |
|---|---|---|
| Number of Emissions Units in the 12 Linked States | 52 | 69 |
| 2023 Projected Total $NO_X$ Emissions in the 12 Linked States (ozone season tons, reflects any existing control before ULNB or LEC were applied) | 6,779 | 9,260 |
| 2023 Projected Total $NO_X$ Emissions in the 12 Linked States after Applying ULNB to Boilers (ozone season tons) | 1,695 | ..... |
| 2023 Projected Total $NO_X$ Emissions in the 12 Linked States after Applying LEC to IC Engines (ozone season tons) | ..... | 1,231 |
| Number of Units with No Known Existing Control | 51 | 57 |

EPA is requesting comments on the feasibility of further controlling $NO_X$ from large ICI boilers and IC engines, including optimizing combustion and installing low $NO_X$ burners (Comment C–17). As mentioned in the discussion above on emissions reductions from the EGU sector, EPA understands that it is generally possible to install LNB on EGU boilers fairly quickly and that these burners can significantly reduce $NO_X$ emissions. EPA notes that in the original interstate transport rule, the $NO_X$ SIP call, the Agency concluded that controls on large, non-EGU boilers and turbines were cost effective and allowed states to include those emissions sources in their budgets as a means of providing additional opportunities to reduce state-wide $NO_X$ emissions in a cost-effective manner.[135] Therefore, the Agency solicits comment on whether EPA should require that large non-EGU boilers and turbines—as defined in the $NO_X$ SIP call as boilers and turbines with heat inputs greater than 250 Million British Thermal Units (mmBtu) per hour or with $NO_X$ emissions greater than 1 ton per ozone season day[136]—within the 12 states employ controls that achieve emissions reductions greater than or equal to what can be achieved through the installation of low $NO_X$ burners (Comment C–18).

Also, five of the 12 states that are subject to this rulemaking are also within the Ozone Transport Region (OTR)—Maryland, New Jersey, New York, Pennsylvania, and Virginia. As member states of the OTR, these five states are required to implement reasonably available control technology

[134] The Least Cost Control Measure worksheet is a table of all possible emissions source-control measure pairings (for sources and measures that meet the respective criteria specified for a control strategy), each of which contains information about the cost and emissions reductions achieved if the control measure were to be applied to the emissions source.

[135] *See* 63 FR 57402 (October 27, 1998).

[136] Note that the 250 mmBTU/hr for ICI boilers and turbines is equivalent to 25 MW heat input for an EGU. The tonnage per source was 1 ton per ozone season day, and because controls on non-EGUs operate year-round, the emissions would be 365 tons per year.

(RACT) state-wide on major sources of emissions.[137] It is likely that $NO_X$ controls, such as low $NO_X$ burners, are already in wide-spread use within these five states. However, such controls may not be as widely used in states outside of the OTR. Therefore, the Agency also solicits comment on (i) the magnitude of the emissions reductions that could be achieved by requiring that large non-EGU boilers and turbines install controls that achieve emissions reductions greater than or equal to what could be achieved through the installation of low $NO_X$ burners, (ii) the prevalence of these or better $NO_X$ controls already in place on this equipment in these 12 states, and (iii) the time it typically takes to install such controls (Comment C–19).

In addition to the above, EPA is requesting comments on the following:

- How effective are ultra-low $NO_X$ burners or low $NO_X$ burners in controlling $NO_X$ emissions from ICI boilers?
- Are they generally considered part of the process or add-on controls? If they are part of a process, how could EPA estimate the cost associated with changing the process to accommodate ultra-low $NO_X$ burners and low $NO_X$ burners?
- What are the costs (capital and annual) for these as add-on control technologies on ICI boilers?
- What are the earliest possible installation times for these control technologies on ICI boilers? EPA believes it is generally possible to install low $NO_X$ burners on EGU boilers relatively quickly and that low $NO_X$ burners can significantly reduce $NO_X$ emissions. EPA solicits comment on whether this is also true for large non-EGU ICI boilers.
- Do some of the emissions units included in the summary already have either add-on controls or controls that are part of a process? If so, what control is on the unit and what is the control device (or removal) efficiency?
- Natural gas compressor stations are the largest $NO_X$-emitting non-EGU sector[138] affecting the 12 states that are the subject of this proposal, and many of these facilities are powered by decades-old, uncontrolled IC engines. Should emissions reductions be sought from the IC engines at these stations, either through installing controls, upgrading equipment, or other means?
- How effective is low emission combustion in controlling $NO_X$ from IC engines?
- What is the cost (capital and annual) for low emission combustion on IC engines?
- What is the earliest possible installation time for low emission combustion on IC engines? In lieu of installing controls, is replacing older, higher emitting equipment with newer equipment a cost-effective way to reduce emissions from IC engines?
- Do some of the emissions units included in the summary already have either add-on controls or controls that are part of a process? If so, what control is on the unit and what is the control device (or removal) efficiency?

EPA welcomes comments providing data and information on all of the above requests (Comment C–20). The Agency encourages stakeholders with particular expertise, such as source owners and operators, state agencies, trade associations, and knowledgeable non-governmental organizations, to evaluate the information available in the docket and presented above and provide updates, corrections, and other information as may assist in improving EPA's ability to more accurately assess non-EGU emission control strategies relevant to addressing interstate ozone transport.

3. Overcontrol Analysis

As part of the air quality analysis using the Ozone AQAT, EPA evaluated potential over-control with respect to whether (1) the expected ozone improvements would be greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) the expected ozone improvements would reduce the upwind state's ozone contributions below the screening threshold (*i.e.,* 1 percent of the NAAQS; 0.75 ppb).

In *EME Homer City,* the Supreme Court held that EPA cannot ''require[] an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked.'' 572 U.S. at 521. On remand from the Supreme Court, the D.C. Circuit held that this means that EPA might overstep its authority ''when those downwind locations would achieve attainment even if less stringent emissions limits were imposed on the upwind States linked to those locations.'' *EME Homer City II,* 795 F.3d at 127. The D.C. Circuit qualified this statement by noting that this ''does not mean that every such upwind State would then be entitled to less stringent emission limits. Some of those upwind States may still be subject to the more stringent emissions limits so as not to cause other downwind locations to which those States are linked to fall into nonattainment.'' *Id.* at 14–15. As the Supreme Court explained, ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' 572 U.S. at 523. The Court noted that ''a degree of imprecision is inevitable in tackling the problem of interstate air pollution'' and that incidental over-control may be unavoidable. *Id.* ''Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.'' *Id.*[139]

Consistent with these instructions from the Supreme Court and the D.C. Circuit, EPA first evaluated whether reductions resulting from the proposed $1,600 per ton emission budgets for EGUs in 2021 and 2022 can be anticipated to resolve any downwind nonattainment or maintenance problems. This assessment shows that the emission budgets reflecting $1,600 per ton would change the status of one of the two nonattainment receptors (first shifting the Stratford monitor to a maintenance-only receptor in 2021 and then shifting that monitor to attainment in 2022). However, no other nonattainment or maintenance problems would be resolved in 2021 or 2022. EPA's assessment shows that none of the 11 states are solely linked to the Stratford receptor that is resolved at the $1,600 per ton level of control stringency in 2022.

Reductions resulting from the $1,600 per ton emission budgets for EGUs would shift the Houston receptor in Harris County, Texas, from maintenance to attainment in 2023. These emission reductions would also shift the last remaining nonattainment receptor (the Westport receptor in Fairfield, Connecticut) to a maintenance-only receptor in 2024. No nonattainment or maintenance receptors would remain after 2024.

Next, EPA evaluated the potential for over-control with respect to the 1 percent of the NAAQS threshold applied in this proposed rulemaking at

[137] One exception to the requirement of state-wide RACT within the OTR is for Virginia. Only the Northeast portion of the state is included within the OTR and only facilities within that portion of the state are subject to RACT.

[138] Based on data from the 2017 NEI database.

[139] Although the Court described over-control as going beyond what is needed to address ''nonattainment'' problems, EPA interprets this holding as not impacting its approach to defining and addressing both nonattainment and maintenance receptors. In particular, EPA continues to interpret the Good Neighbor provision as requiring it to give independent effect to the ''interfere with maintenance'' prong. *Accord Wisconsin,* 938 F.3d at 325–27.

step 2 of the good neighbor framework for the $1,600 per ton cost threshold level for each year downwind nonattainment and maintenance problems persist (*i.e.,* 2021 through 2024). Specifically, EPA evaluated whether the emission levels would reduce upwind EGU emissions to a level where the contribution from any of the 12 upwind states would be below the 1 percent threshold that linked the upwind state to the downwind receptors. EPA finds that under the $1,600 per ton EGU cost threshold level for 2021 to 2024 emission levels, all 12 states that contributed greater than or equal to the 1 percent threshold in the base case continued to contribute greater than or equal to 1 percent of the NAAQS to at least one remaining downwind nonattainment or maintenance receptor for as long as that receptor remained in nonattainment or maintenance. For more information about this assessment, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and the Ozone AQAT.

Since emission reductions resulting from the proposed $1,600 per ton emission budgets for EGUs are not projected to result in the expected ozone improvements (1) being greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) reducing the upwind state's ozone contributions below the screening threshold (*i.e.,* 1 percent of the NAAQS; 0.75 ppb), EPA concludes that the $1,600 control strategy does not result in overcontrol.

Based on the multi-factor test applied to both EGU and non-EGU sources and subsequent assessment of overcontrol, EPA proposes to determine that the emission reductions associated with the $1,600 per ton control stringency for EGUs constitute elimination of significant contribution from the 12 linked upwind states. Therefore, as discussed in section VIII, EPA proposes to establish emission budgets for EGUs in the 12 linked states that reflect the remaining allowable emissions after the emissions reductions associated with the $1,600 per ton control stringency have been achieved.

## VIII. Implementation of Emissions Reductions

### *A. Regulatory Requirements for EGUs*

The CSAPR established a $NO_X$ ozone season trading program for states determined in that rulemaking to have good neighbor obligations with respect to the 1997 ozone NAAQS. The CSAPR Update established a new $NO_X$ ozone season trading program for 22 states determined to have good neighbor obligations with respect to the 2008 ozone NAAQS—the CSAPR $NO_X$ Ozone Season Group 2 Trading Program—and renamed the $NO_X$ ozone season trading program established in the CSAPR, which now covers only Georgia, the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.[140] Each of these $NO_X$ ozone season trading programs established state-level budgets for EGUs and allowed affected sources within each state to use, trade, or bank allowances within the same trading group for compliance. In the CSAPR $NO_X$ Ozone Season Group 1 and Group 2 trading programs, sources are required to retire one Group 1 or Group 2 allowance, respectively, for each ton of $NO_X$ emitted during a given ozone season. EPA is proposing to use the same regional trading approach, with modifications to reflect updated budgets, trading groups, and certain additional revisions, as the compliance remedy implemented through the FIPs to address interstate transport for the states having further good neighbor obligations with respect to the 2008 ozone NAAQS in this rule.

Of the 22 states currently covered by the CSAPR $NO_X$ Ozone Season Group 2 Trading Program, EPA is proposing to establish revised budgets for 12 states, as explained below. Therefore, EPA is proposing the creation of an additional geographic group and trading program comprised of these 12 upwind states with remaining linkages to downwind air quality problems in 2021. This new group, Group 3, will be covered by a new CSAPR NOx Ozone Season Group 3 Trading Program. Aside from the removal of the 12 covered states from the current Group 2 program, this proposal leaves unchanged the budget stringency and geography of the existing CSAPR $NO_X$ Ozone Season Group 1 and Group 2 trading programs.

EPA is proposing to use the existing CSAPR $NO_X$ ozone season allowance trading system framework, established in the CSAPR for Group 1 and used again in the CSAPR Update for Group 2, to implement the emission reductions identified and quantified in the FIPs for this proposal. The new Group 3 trading program is proposed to be codified at 40 CFR part 97, subpart GGGGG. As with the existing CSAPR trading programs, emissions monitoring and reporting would be performed according to the provisions of 40 CFR part 75, and decisions of the Administrator under the program would be subject to the administrative appeal procedures in 40 CFR part 78.

### *B. Quantifying State Emissions Budgets*

EPA is proposing to quantify state emission budgets consistent with the approach used in the CSAPR Update. However, given *Wisconsin's* direction to implement a full remedy, EPA must now address upwind emission reduction potential beyond the initial year for which it is establishing emission budgets. Whereas in the partial-remedy context of the CSAPR Update, EPA only established budgets based on its assessment of the 2017 analytic year and noted it would revisit future years at a later date, in this action EPA is simultaneously looking at budgets for all relevant future years to comply with the full-remedy directive. Consequently, for the Group 3 states EPA is proposing to quantify specific budgets in each year to ensure that EGUs continue to be incentivized to implement the full extent of EPA's selected control strategy while nonattainment and maintenance concerns at the linked downwind receptors remain unresolved. In effect, by doing this, EPA will be accounting for scheduled fleet turnover after the first-year budget. For instance, if State X's budget was 100 tons in 2021, but there are 10 tons of emissions from a unit scheduled to retire at the end of the year and 5 tons expected from a new unit coming online, then the state emission budget for 2022 would reflect these scheduled changes by establishing a budget of 100 tons—(10 tons -5 tons) = 95 tons for the subsequent year. This adjustment in methodology reflects the need to anticipate and respond to scheduled fleet turnover in the power sector in ensuring that the control strategy selected to eliminate significant contribution remains incentivized. Based on the Agency's experience implementing prior good neighbor trading programs, emissions budgets that do not account for planned retirements in subsequent years lead to an erosion in the allowance price signal and hence a reduced incentive to take the mitigation measures identified in EPA's significant contribution determination (*e.g.,* optimize SCRs). EPA's air quality projections demonstrate that even with a $1,600 per ton EGU strategy, the Group 3 states continue to contribute above the 1

[140] For states that were determined in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS in addition to the 2008 ozone NAAQS, participation in the Group 2 trading program replaced participation in the Group 1 program as the FIP remedy for such states' obligations with respect to the 1997 NAAQS. *See* 81 FR 74509.

percent of the NAAQS threshold to at least one receptor whose nonattainment and maintenance concerns persist through the 2024 ozone season (with the exception of Louisiana, as discussed in more detail below). As such, and in order to implement a full remedy as required under the *Wisconsin* decision, EPA proposes that it is necessary to design a Step 4 implementation framework that will effectively ensure the continued optimization of existing SCR and the incentive to install or upgrade combustion controls for so long as downwind nonattainment and maintenance concerns persist. Therefore, for all Group 3 states except Louisiana, the emission budget setting process described below applies to each year from 2021 through 2024, with the budgets held constant from 2024 onwards. For Louisiana, the emission budget setting process applies to 2021 and 2022 only, with the budget held constant from 2022 onwards, as the Houston receptor is resolved in 2023.

EPA is not proposing to increase the stringency of the program over these years in the sense of requiring any further emissions reductions than the control strategy represented by $1600 per ton achieves. Rather, these budget adjustments account for pre-existing, on-going changes in the EGU sector, which if not accounted for, could significantly weaken the incentive to optimize existing SCR and install or upgrade combustion controls. By determining emissions budgets for a given mitigation technology across a range of years (*e.g.,* 2021–2024), EPA is able to best reflect the realization of that mitigation strategy in any given year. For instance, a unit may be scheduled to retire (independent of any environmental regulation) in 2023. Therefore, the same $1,600 per ton uniform technology scenario (*i.e.,* SCR optimization and combustion control installation or upgrade) will produce a different state emissions level (*i.e.,* budget) in 2021 and 2024 due to this change in fleet composition. Having the emissions estimated for each year allows EPA to best ensure the reductions available from the identified control strategy continue to be achieved to eliminate that state's significant contribution. This type of phased implementation preserves the intended control stringency of the rule and is consistent with the direction under the *Wisconsin* decision to promulgate a full-remedy rule. In prior trading programs, stakeholders have observed that the program's static emission budgets quickly fell behind the rapid pace of change in the power sector fleet. As this occurs, a large allowance bank builds and the price of allowances falls below the price in the initial years. For example, CSAPR Update Group 2 allowances started out at levels near $800 per ton in 2017 and provided a strong signal for the mitigation technology identified in the significant contribution determination. However, in subsequent years as the fleet of covered EGUs changed, the price of those allowances declined to less than $70 per ton in July 2020.[141] Stakeholders have pointed out that these low prices could allow for some backsliding of the mitigation technologies (*e.g.,* reduced incentive to operate a SCR) that were initially determined to be cost-effective and required to eliminate significant contribution. At the same time that the incentive for EPA's selected control strategy weakens, EPA's data shows that downwind air quality receptors continue to persist at Step 1, and the overall level of anthropogenic emissions from an upwind state continues to contribute to those receptors above the contribution threshold at Step 2. Under these conditions, a legal basis exists within EPA's 4-step framework to undertake measures that ensure EGUs continue to implement EPA's selected control strategy. Stated differently, EPA is confident that it is well within its statutory authority under CAA section 110(a)(2)(D)(i)(I) to impose on each covered EGU in a linked Upwind state an emission limit that is enforceable and permanent, reflective of the control strategy EPA has determined is needed to eliminate significant contribution from that state. EPA is proposing an approach that better incentivizes the selected control strategy while retaining the flexible compliance benefits of an interstate-trading approach to implementation.[142]

In summary, in response to the *Wisconsin* court's direction to implement a full remedy, EPA is proposing to implement ozone season budgets for each year that reflect ongoing incentivization of the emission reduction measures identified in this rule, with a final budget being implemented in 2024 (the last year EPA projects downwind receptors to remain unresolved) and then held constant for each year thereafter. EPA requests comment on this approach (Comment C–21).

EPA's proposed emissions budget methodology and formula for establishing Group 3 budgets are described in detail in the Ozone Transport Policy Analysis Proposed Rule TSD and summarized below.

For determining emission budgets, EPA proposes to use historical ozone season data from the most recent year reported (that is, 2019 ozone season data for this proposed rulemaking). This is similar to its approach in the CSAPR Update where EPA began with 2015 data (the most recent year at the time). Like the CSAPR Update methodology, EPA is proposing to combine historical data with IPM data to determine emission budgets. The budget setting process has three primary steps:

(1) Determine a future year baseline—Start with the latest reported historical unit-level data (*e.g.,* 2019), and adjust any unit data where a retirement or new build is known to occur by the baseline year. This results in a future year (*e.g.,* 2021) baseline for emissions budget purposes.[143]

(2) Factor in additional mitigation controls for the selected cost threshold (*e.g.,* $1600 per ton). For the unit-level mitigation technologies identified at this cost level, adjust the baseline unit-level emissions and emission rates. For example, if a SCR-controlled unit had a baseline greater than 0.08 lb/mmBtu, its rate and corresponding emissions would be adjusted down to levels reflecting its operation at 0.08 lb/mmBtu.

(3) Incorporate generation shifting—Use IPM in relative way to capture the reductions expected from generation shifting at a given $ per ton level that reflects control optimization (constrained to within-state shifting).

By using historical unit and state-level $NO_X$ emission rates, heat input, and emissions data at step 1 of the budget setting process, EPA is grounding its budgets in the most recent historical operation for the covered units.[144] This data is a reasonable starting point for the budget setting process as it reflects the latest data reported by affected facilities under 40 CFR part 75. The reporting requirements

[141] Data from S&P Global Market Intelligence.

[142] EPA continues to believe in the value of an interstate trading program for implementation of good neighbor obligations for EGUs. Through trading, the ultimate choice of compliance strategy is left to EGU owners and operators. EPA is not imposing an enforceable mandate that each EGU with an existing SCR or ability to install or upgrade combustion controls undertake the strategies represented by the $1600 per ton threshold. Sources have maximum flexibility to undertake compliance strategies that meet their specific operational and planning needs.

[143] EPA is using 2019 historical data at proposal because that was the latest available at that time. As 2020 data becomes available, EPA will evaluate it for potential use at the time of final rulemaking.

[144] EPA notes that historical state-level ozone season EGU $NO_X$ emission rates are publicly available and quality assured data. They are monitored using CEMs or other methodologies allowed for use by qualifying units under 40 CFR part 75 and are reported to EPA directly by power sector sources.

include quality control measures, verification measures, and instrumentation to best record and report the data. In addition, the designated representatives of EGU sources are required to attest to the accuracy and completeness of the data. In step 1 of the budget setting process, EPA first adjusted the 2019 ozone-season data to reflect committed fleet changes under a baseline scenario (*i.e.,* announced and confirmed retirements, new builds, and retrofits that will, or have already occurred by 2021). For example, if a unit emitted in 2019, but retired in 2020, its 2019 emissions would not be included in the 2021 estimate. For units that had no known changes, the 2021 emissions assumption was the actual reported data from 2019 at this first step of adjusting the baseline. EPA also included known new units and scheduled retrofits in this manner. Using this method, EPA arrived at a baseline emission, heat input, and emission rate estimate for each unit for a future year (*e.g.,* 2021), and then was able to aggregate those unit-level estimates to state-level totals. These state-level totals constituted the state's baseline from an engineering analytics perspective. The ozone-season state-level emissions, heat input, and emissions rates for covered sources under a baseline scenario were determined for each future year examined (2021 through 2024). Because 2024 is the last ozone season that EPA projects continued contribution to any downwind receptors, 2024 is the last year EPA proposes to make an adjustment to emission budgets.

For step two of the emissions budget setting process, EPA examined how the baseline emissions and emission rates would change under different mitigation cost threshold scenarios for EGUs. For instance, under the $1,600 per ton scenario, if a unit was not operating its SCR at 0.08 lb/mmBtu or lower in the baseline, EPA lowered that unit's assumed emission rate to 0.08 lb/mmBtu and calculated the impact on the unit's and state's emission rate and emissions. Note, the heat input is held constant for the unit in the process, reflecting the same level of unit operation compared to historical 2019 data. An improved emission rate is then applied to this heat input, reflecting control optimization. In this manner, the state-level baseline totals from step one reflecting known baseline changes were adjusted to reflect the additional application of the assumed control technology at a given cost threshold.

Finally, at step three of the emissions budget setting process, EPA used IPM to capture any generation shifting at a given cost threshold (*e.g.,* $1,600 per ton) necessary for the respective mitigation technology to operate. EPA explains how it accounts for generation shifting in more detail in in Section VII.B and in the Ozone Transport Policy Analysis TSD. In this rule, as a proxy for the near-term reductions required by 2021, EPA has constrained generation shifting to occur only within-state. As explained in the Ozone Transport Policy Analysis TSD, the degree to which generation shifting affects the budgets is small, accounting for approximately 2 percent of baseline emissions for each year.

EPA requests comment on the proposed approaches described above, as well as alternatives discussed in the budget-setting TSD (Comment C–22). Specifically, EPA requests comment on its consideration of using 2020 data in place of 2019 data as the most recent historical data set to inform final rule budgets. Although the reduction potential associated with the selected control strategy described in section VII would likely not change substantially with that data set, the baseline values calculated in step one of the emissions budget setting process may change significantly and possibly result in lower or higher state-level emission budgets.

### *C. Elements of Proposed Trading Program*

To implement the updated emissions budgets developed according to the process described in section VIII.B., EPA is proposing to require EGUs in each of the 12 covered states to participate in a new CSAPR $NO_X$ Ozone Season Group 3 Trading Program. The provisions of the new Group 3 trading program would be largely identical to the provisions of the Group 2 trading program in which all of the covered EGUs currently participate, except for the differences in state budgets and geography established in this rule to address the covered states' remaining obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The only other differences between the new Group 3 trading program regulations and the current Group 2 trading program regulations are a small number of proposed corrections and administrative simplifications that have no effect on program stringency; EPA proposes to eliminate these differences by making the same corrections and simplifications to the regulations for the Group 2 trading program and the other existing CSAPR trading programs.[145] In this section, the Agency discusses major elements of the proposed trading program, with emphasis on the elements that differ from the existing provisions of the Group 2 trading program as well as several provisions specifically designed to address the transition from the Group 2 trading program to the Group 3 trading program. EPA requests comment on use of the proposed trading program to implement the emissions reductions that are proposed to be required under this action (Comment C–23).

#### 1. Applicability

In this rule, EPA proposes to use the same EGU applicability provisions in the new Group 3 trading program as it used in the existing Group 2 trading program and the other CSAPR trading programs, without change. Under the general CSAPR applicability provisions, a covered unit is any stationary fossil-fuel-fired boiler or combustion turbine serving at any time on or after January 1, 2005, a generator with nameplate capacity exceeding 25 MW, which is producing electricity for sale, with the exception of certain cogeneration units and solid waste incineration units.

#### 2. State Budgets, Variability Limits, Assurance Levels, and Penalties

EPA is proposing to establish revised state budgets for EGU emissions of ozone season $NO_X$ for the 12 ''Group 3'' states subject to new or amended FIPs in this proposed rule in order to fully address these states' significant contribution with respect to the 2008 ozone NAAQS. The budgets would be established according to the process described in section VIII.B. As discussed in that section, for each of the covered states, separate budgets are proposed for the three individual years 2021, 2022, and 2023, and then for 2024 and beyond.[146] Portions of the updated $NO_X$ ozone season emission budgets would be reserved as updated new unit set-asides and Indian country new unit set-asides for the same control periods, as further described in sections VIII.C.3.b. and VIII.C.3.c. The amounts

[145] The proposed corrections and simplifications generally would apply to each of the five existing CSAPR trading programs at subparts AAAAA through EEEEE of 40 CFR part 97, and a subset would also apply to the Texas $SO_2$ Trading Program at subpart FFFFF of 40 CFR part 97. The specific proposed corrections and simplifications are described as applied to the new Group 3 trading program in sections VIII.C.1. through VIII.C.7. The same changes as applied to the existing programs are discussed in section VIII.C.8.

[146] See section VIII.C.4.a. for a discussion of transitional provisions that would apply in the event that the effective date for a final action in this rulemaking is after May 1, 2021.

of the proposed state emissions budgets for 2021, 2022, 2023, and 2024 and beyond are shown in tables VIII.C.2–1, VIII.C.2–2, VIII.C.2–3, and VIII.C.2–4.

The proposed requirement for EGU sources in these states to comply with the budgets established in this rulemaking will replace the existing requirements in these states under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program established in the CSAPR Update. For Group 3 states that were found in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS, EPA proposes that participation in the more stringent Group 3 trading program would satisfy those obligations.[147]

In the CSAPR and the CSAPR Update, EPA developed assurance provisions, including variability limits and assurance levels (with associated compliance penalties), to ensure that each state will meet its pollution control and emission reduction obligations and to accommodate inherent year-to-year variability in state-level EGU operations. Establishing assurance levels with compliance penalties responds to the D.C. Circuit's holding in *North Carolina* requiring EPA to ensure within the context of an interstate trading program that sources in each state are required to eliminate emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state.[148]

The CSAPR Update budgets, and the updated CSAPR emission budgets proposed in this document, reflect EGU operations in an ''average year.'' However, year-to-year variability in EGU operations occurs due to the interconnected nature of the power sector, changing weather patterns, changes in electricity demand, or disruptions in electricity supply from other units or from the transmission grid. Recognizing this, the trading program provisions finalized in the CSAPR and the CSAPR Update rulemakings include variability limits, which define the amount by which an individual state's emissions may exceed the level of its budget in a given year to account for variability in EGU operations. A state's budget plus its variability limit equals a state's assurance level, which acts as a cap on a state's $NO_X$ emissions during a given control period (in this rulemaking, the relevant control period is the May–September ozone season). The new CSAPR $NO_X$ Ozone Season Group 3 Trading Program provisions established for affected sources in the 12 states subject to the new trading program under this proposed rule contain equivalent assurance provisions to the prior CSAPR trading programs.

The variability limits ensure that the trading program can accommodate the inherent variability in the power sector while ensuring that each state eliminates the amount of emissions within the state, in a given control period, that must be eliminated to meet the statutory mandate of CAA section 110(a)(2)(D)(i)(I). Moreover, the structure of the trading program, which achieves required emission reductions through limits on the total numbers of allowances allocated, assurance provisions, and penalty mechanisms, ensures that the variability limits only allow the amount of temporal and geographic shifting of emissions that is likely to result from the inherent variability in power generation, and not from decisions to avoid or delay the optimization or installation of necessary controls.

To establish the variability limits in the CSAPR, EPA analyzed historical state-level heat input variability as a proxy for emissions variability, assuming constant emission rates. *See* 76 FR 48265. The variability limits for ozone season $NO_X$ in both the CSAPR and the CSAPR Update were calculated as 21 percent of each state's budget, and these variability limits for the $NO_X$ ozone season trading programs were then codified in 40 CFR 97.510 and 40 CFR 97.810, along with the respective state budgets. For this proposed rulemaking, EPA is proposing to retain variability limits for the 12 Group 3 states covered by this rule calculated as 21 percent of each state's revised budget.[149]

TABLE VIII.C.2–1—CSAPR $NO_X$ OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2021 [150]

| State | Emission budget (tons) | Variability limit (tons) | Assurance level (tons) |
|---|---|---|---|
| Illinois | 9,444 | 1,983 | 11,427 |
| Indiana | 12,500 | 2,625 | 15,125 |
| Kentucky | 14,384 | 3,021 | 17,405 |
| Louisiana | 15,402 | 3,234 | 18,636 |
| Maryland | 1,522 | 320 | 1,842 |
| Michigan | 12,727 | 2,673 | 15,400 |
| New Jersey | 1,253 | 263 | 1,516 |
| New York | 3,137 | 659 | 3,796 |
| Ohio | 9,605 | 2,017 | 11,622 |
| Pennsylvania | 8,076 | 1,696 | 9,772 |
| Virginia | 4,544 | 954 | 5,498 |
| West Virginia | 13,686 | 2,874 | 16,560 |

[147] Out of the 12 states proposed for inclusion in the Group 3 trading program, Illinois, Indiana, Kentucky, and Louisiana were found in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS. *See* 81 FR 74509 n.21 (November 21, 2016).

[148] 531 F.3d at 908.

[149] See section VIII.C.4.a. for a discussion of transitional provisions that would apply in the event that the effective date for a final action in this rulemaking is after May 1, 2021.

[150] The state-level emission budget calculations pertaining to Tables VIII.C.2–1 through VIII.C.2–4 are described in section VIII.B, and in greater detail in the Ozone Transport Policy Analysis TSD. Budget calculations and underlying data are also available in Appendix A of that TSD.

TABLE VIII.C.2–2—CSAPR $NO_X$ OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2022

| State | Emission budget (tons) | Variability limit (tons) | Assurance level (tons) |
|---|---|---|---|
| Illinois | 9,415 | 1,977 | 11,392 |
| Indiana | 11,998 | 2,520 | 14,518 |
| Kentucky | 11,936 | 2,507 | 14,443 |
| Louisiana | 14,871 | 3,123 | 17,994 |
| Maryland | 1,498 | 315 | 1,813 |
| Michigan | 11,767 | 2,471 | 14,238 |
| New Jersey | 1,253 | 263 | 1,516 |
| New York | 3,137 | 659 | 3,796 |
| Ohio | 9,676 | 2,032 | 11,708 |
| Pennsylvania | 8,076 | 1,696 | 9,772 |
| Virginia | 3,656 | 768 | 4,424 |
| West Virginia | 12,813 | 2,691 | 15,504 |

TABLE VIII.C.2–3—CSAPR $NO_X$ OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2023

| State | Emission budget (tons) | Variability limit (tons) | Assurance level (tons) |
|---|---|---|---|
| Illinois | 8,397 | 1,763 | 10,160 |
| Indiana | 11,998 | 2,520 | 14,518 |
| Kentucky | 11,936 | 2,507 | 14,443 |
| Louisiana | 14,871 | 3,123 | 17,994 |
| Maryland | 1,498 | 315 | 1,813 |
| Michigan | 9,803 | 2,059 | 11,862 |
| New Jersey | 1,253 | 263 | 1,516 |
| New York | 3,137 | 659 | 3,796 |
| Ohio | 9,676 | 2,032 | 11,708 |
| Pennsylvania | 8,076 | 1,696 | 9,772 |
| Virginia | 3,656 | 768 | 4,424 |
| West Virginia | 11,810 | 2,480 | 14,290 |

TABLE VIII.C.2–4—CSAPR $NO_X$ OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2024 AND BEYOND

| State | Emission budget (tons) | Variability limit (tons) | Assurance level (tons) |
|---|---|---|---|
| Illinois | 8,397 | 1,763 | 10,160 |
| Indiana | 9,447 | 1,984 | 11,431 |
| Kentucky | 11,936 | 2,507 | 14,443 |
| Louisiana | 14,871 | 3,123 | 17,994 |
| Maryland | 1,498 | 315 | 1,813 |
| Michigan | 9,614 | 2,019 | 11,633 |
| New Jersey | 1,253 | 263 | 1,516 |
| New York | 3,119 | 655 | 3,774 |
| Ohio | 9,676 | 2,032 | 11,708 |
| Pennsylvania | 8,076 | 1,696 | 9,772 |
| Virginia | 3,395 | 713 | 4,108 |
| West Virginia | 11,810 | 2,480 | 14,290 |

The assurance provisions include penalties that are triggered in the event that the covered sources' emissions in a given state, as a whole, exceed the state's assurance level. The CSAPR and the CSAPR Update provided that, when the emissions from EGUs in a state exceed that state's assurance level in a given year, particular sources within that state will be assessed a 3-to-1 allowance surrender on the exceedance of the assurance level. Specifically, each excess ton above a given state's assurance level must be met with one allowance, per standard compliance, and two additional allowances to satisfy the penalty. The penalty was designed to deter state-level emissions from exceeding assurance levels. In both the CSAPR and the CSAPR Update, the assurance provisions were designed to account for variability in the electricity sector while ensuring that the necessary emission reductions occur within each covered state, consistent with the court's holding in *North Carolina,* 531 F.3d at 908. If EGU emissions in a given state do not exceed that state's assurance level, no penalties are incurred by any source.

To assess the penalty under the assurance provisions, EPA is proposing to follow the same methodology

finalized in the CSAPR Update. *See* 81 FR 74567. In that methodology, EPA evaluates whether any state's total EGU emissions in a control period exceeded the state's assurance level, and if so, EPA then determines which groups of units in the state represented by a ''common designated representative'' emitted in excess of the common designated representative's share of the state assurance level and, therefore, will be subject to the allowance surrender requirement described above. Penalties under the assurance provisions are triggered for the group of sources represented by a common designated representative when two conditions are met: (1) The group of sources and units with a common designated representative are located in a state where the total state EGU emissions for a control period exceed the state assurance level; and (2) that group with the common designated representative had emissions exceeding the respective common designated representative's share of the state assurance level. EPA is proposing assurance provisions for the CSAPR $NO_X$ Ozone Season Group 3 Trading Program that are equivalent to the assurance provisions in the CSAPR $NO_x$ Ozone Season Group 2 Trading Program.

In this action, EPA is proposing minor revisions to the procedures for administering the assurance provisions starting with the 2023 control period [151] for consistency with proposed revisions to the process for allocating allowances from the new unit set-asides that are discussed in section VIII.C.3.b. The same minor revisions are proposed to be implemented in the existing CSAPR trading programs, as discussed in section VIII.C.8. The proposed revisions concern the procedures for determining the portion of the state's assurance level to be assigned to each common designated representative. Specifically, certain provisions of these procedures are designed to address circumstances where a new unit operates but has no allowance allocation determined for it. Administration of these provisions requires EPA to issue a notice to collect information needed solely for this purpose that is not otherwise required to be reported to EPA. Because the revised new unit set-aside (''NUSA'') allocation procedures would eliminate the possibility that a new unit would not have an allowance allocation determined for it, EPA proposes to eliminate the provisions for issuance of the related extra notice starting with the 2023 control period. EPA also proposes to extend the date as of which a common designated representative is determined under both the new Group 3 program and the existing CSAPR programs from April 1 of the year following the control period to July 1 so as to preserve the relationship of those dates to the allowance transfer deadline, which is proposed to be extended from March 1 of the year following the control period to June 1.[152] Further discussion of these changes from the current provisions in the existing trading programs is provided in section VIII.C.8.

EPA requests comment on the proposed state budgets, variability limits, assurance levels, and assurance provisions (Comment C–24).

3. Unit-Level Allocations of Emissions Allowances

For states participating in the CSAPR Group 3 trading program, EPA proposes to issue CSAPR $NO_X$ Ozone Season Group 3 allowances to be used for compliance beginning with the 2021 ozone season. This section explains the process by which EPA proposes to allocate these allowances to existing units and new units in each state up to that state's budget. For existing units, EPA is proposing to apply the same allocation methodology finalized in the CSAPR Update but using updated data. This methodology considers both a unit's historical heat input and its maximum historical emissions. *See* 81 FR 74564–65. For new units, EPA is proposing to apply the same two-round allocation methodology finalized in the CSAPR Update for the 2021 and 2022 control periods and a similar, but less complex, one-round methodology starting with the 2023 control period. This section also describes allocation to the new unit set-asides (NUSA) and Indian Country new unit set-asides in each state; allocation to units that are not operating; and the recordation of allowance allocations in facility compliance accounts.

a. Allocations to Existing Units

EPA in this action proposes to allocate allowances to existing units in the Group 3 states following the same methodology for allowance allocation that was used in the CSAPR Update, except that the historical heat input and other data used within this methodology to establish unit-level allocations would be updated to the most recent period for which EPA has data. The portion of a state budget allocated to existing units in that state would be the state budget minus the state's new unit set-aside and minus the state's Indian country new unit set-aside. The new unit set-asides are portions of each budget reserved for new units that might locate in each state or in Indian country in the future. For the proposed existing source level allocations, see the Proposed Rule TSD ''Unit Level Allocations and Underlying Data for the CSAPR for the 2008 Ozone NAAQS,'' in the docket for this rulemaking. The only allowance allocations that would be updated in this final rule are allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances issued under and used for compliance in the Group 3 trading program. EPA is not proposing to change allocations of allowances used in the CSAPR $NO_X$ Ozone Season Group 1 or Group 2, $NO_X$ Annual, or $SO_2$ Group 1 or Group 2 trading programs and is not reopening the previously established allocations under these programs.

For the purpose of allocations, the CSAPR considered an ''existing unit'' to be a unit that commenced commercial operation prior to January 1, 2010, and the CSAPR Update considered an ''existing unit'' to be a unit that commenced commercial operation prior to January 1, 2015. For the 12 states subject to new or amended FIPs in this rulemaking, EPA proposes to consider an ''existing unit'' for purposes of the Group 3 program to be a unit that commenced commercial operation prior to January 1, 2019, and that does not cease operation before January 1, 2021. This change will allow units commencing commercial operation between 2015 and 2019 to be directly allocated allowances from each state's budget as existing units and will allow the new unit set-asides to be fully reserved for any future new units locating in covered states or Indian country. Using data available at the time of proposal development, EPA has identified which units in the proposed Group 3 states that currently submit quarterly emissions reports to EPA appear to be eligible or ineligible to receive allowance allocations as existing units; [153] for the final rule, EPA anticipates that the lists of units will be updated with the most recent data. EPA is not proposing to reconsider which units are ''existing units'' for purposes of any other CSAPR trading program.

[151] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised procedures starting with the 2021 control periods.

[152] As discussed in section VIII.C.8., in order to minimize unnecessary differences between the CSAPR trading programs and the similarly structured Texas $SO_2$ Trading Program, EPA is also proposing to revise the date for determination of a common designated representative under the Texas $SO_2$ Trading Program as of the 2023 control period.

[153] *See* ''CSAPR $NO_X$ OS Group 3—Unit Level Allocations and Underlying Data.xls'', available in the docket.

Sources in most of the proposed Group 3 states also participate in the CSAPR $NO_X$ Annual and $SO_2$ Group 1 trading programs, for which an ''existing unit'' is a unit that commenced commercial operation before January 1, 2010. Thus, a unit that is located in one of these states and that commenced commercial operation between January 1, 2010, and January 1, 2019, would be considered an ''existing unit'' for purposes of the Group 3 trading program but would continue to be considered a ''new unit'' for purposes of the CSAPR $NO_X$ Annual and $SO_2$ Group 1 trading programs.

EPA proposes to apply the methodology finalized in the CSAPR Update for allocating emission allowances to existing units, updated to the most recent years of relevant data by the respective publication dates of this proposed and final action. This methodology allocates allowances to each unit based on the unit's share of the state's heat input, limited by the unit's maximum historical emissions. As discussed in the CSAPR Update, *see* 81 FR 74563–65, EPA finds this allowance allocation approach to be fuel-neutral, control-neutral, transparent, based on reliable data, and similar to allocation methodologies previously used in the CSAPR, the $NO_X$ SIP Call, and the Acid Rain Program.[154] EPA is therefore proposing the continued application of this methodology for allocating allowances to existing sources in this proposed rule. Under the CSAPR Update, if, at the time the rule was finalized, a state had already submitted a SIP revision addressing the allocation of the CSAPR $NO_X$ ozone season allowances among the units in the state, and if the SIP submission's allocation provisions could be applied to an updated budget, the state's preferred allocation methodology would govern the allocation of allowances among that state's units under the final CSAPR Update. Two of the proposed Group 3 states (Indiana and New York) have such methodologies for allocating the CSAPR $NO_X$ Ozone Season Group 2 allowances among their units. EPA is proposing to carry out the intent of these SIPs by establishing initial allowance allocations to existing units under the FIPs for these two states using the allocation methodologies already adopted by the states.

This proposed rule uses the average of the three highest years of heat input data out of the most recent five-year period to establish the heat input baseline for each unit.[155] These heat input data are used to calculate each unit's proportion of state-level heat input (the average of the unit's three highest non-zero years of heat input divided by the total of such averages within the given state). In general, EPA applies this proportion to the total amount of existing unit allowances to be allocated to quantify unit-level allocations. However, EPA constrains the unit-level allocations so as not to exceed each unit's maximum historical baseline emissions, calculated as the highest year of emissions out of the most recent eight-year period.[156] This proposal evaluates 2015–2019 heat input data and 2012–2019 emissions data, which are the most recent data available as of proposal publication. EPA proposes to recalculate unit level allocations with the most recent five years of heat input and the most recent eight years of emissions data along with the most recent supporting data in the final rule.

As under both the CSAPR and the CSAPR Update, states would have several options under this proposed rulemaking to submit SIP revisions which, if approved, may result in the replacement of EPA's default allocations with state-determined allocations for the 2022 control period and beyond. The provisions described above will not preclude any state from submitting an alternative allocation methodology for later control periods through a SIP submission. See section VIII.D. for details on the development of approvable SIP submissions.

EPA requests comment on the proposed approach for allocating allowances to existing units (Comment C–25).

b. Allocations to New Units

Consistent with the updates to which units are considered to be ''existing units'' described above, for purposes of this proposed rule a ''new unit'' that is eligible to receive allocations from the new unit set-aside (NUSA) for a state includes any covered unit that commences commercial operation on or after January 1, 2019, as well as a unit that becomes covered by meeting applicability criteria subsequent to January 1, 2019; a unit that relocates to a different state covered by a FIP promulgated by this rule; and an ''existing'' covered unit that ceases operation for two consecutive years following the start of program implementation (thereby losing its previous allowance allocation as an ''existing'' unit) but that resumes operation at some point thereafter. EPA is also proposing allocations to a NUSA for each state equal to a minimum of 2 percent of the total state budget, plus the projected amount of emissions from planned units in that state. For instance, if planned units in a state are projected to emit 3 percent of the state's $NO_X$ ozone season emission budget, then the new unit set-aside for the state would be set at 5 percent, which is the sum of the minimum 2 percent set-aside plus an additional 3 percent for planned units. This is the same approach currently used to implement the NUSA for all the CSAPR trading programs. *See* 76 FR 48292 (August 8, 2011). Note that New York has set its NUSA percentage within its approved SIP to 5 percent without consideration of planned units; therefore, this NUSA percentage is proposed to be used for New York. Pursuant to the CSAPR regulations, new units may receive allocations starting with the first year they are subject to the allowance-holding requirements of the rule. If the allowances in the NUSA remain unallocated to new units, the allowances from the set-asides are redistributed to existing units before each compliance deadline.

[154] *See* 40 CFR parts 72–78.

[155] As described in the Unit Level Allowance Allocations TSD and done in prior CSAPR actions, the allocation method uses a five-year baseline in order to improve representation of a unit's normal operating conditions. Using the three highest, non-zero ozone season heat input values within the five-year baseline reduces the likelihood that any particular single year's operations (which might not be representative due to outages or other unusual events) determine a unit's allocation.

[156] EPA's allocation methodology also considers whether unit-level allocations should be limited because they would otherwise exceed emission levels that are permissible under the terms of consent decrees. However, in this instance EPA's analysis indicates that consideration of consent decree limits does not alter the unit-level allocations.

TABLE VIII.C.3–1—CSAPR $NO_X$ OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2021

| State | Emission budgets (tons) | New unit set-aside amount (percent) | Total new unit set-aside amount for new units (tons) | New unit set-aside amount for new units not in Indian country (tons) | Indian country new unit set-aside amount (tons) |
|---|---|---|---|---|---|
| Illinois | 9,444 | 2 | 181 | 181 | ..... |
| Indiana | 12,500 | 2 | 253 | 253 | ..... |
| Kentucky | 14,384 | 2 | 289 | 289 | ..... |
| Louisiana | 15,402 | 3 | 459 | 444 | 15 |
| Maryland | 1,522 | 2 | 31 | 31 | ..... |
| Michigan | 12,727 | 3 | 384 | 371 | 13 |
| New Jersey | 1,253 | 2 | 27 | 27 | ..... |
| New York | 3,137 | 5 | 157 | 154 | 3 |
| Ohio | 9,605 | 3 | 285 | 285 | ..... |
| Pennsylvania | 8,076 | 4 | 326 | 326 | ..... |
| Virginia | 4,544 | 2 | 91 | 91 | ..... |
| West Virginia | 13,686 | 2 | 273 | 273 | ..... |

TABLE VIII.C.3–2—CSAPR $NO_X$ OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2022

| State | Emission budgets (tons) | New unit set-aside amount (percent) | Total new unit set-aside amount for new units (tons) | New unit set-aside amount for new units not in Indian country (tons) | Indian country new unit set-aside amount (tons) |
|---|---|---|---|---|---|
| Illinois | 9,415 | 2 | 181 | 181 | ..... |
| Indiana | 11,998 | 2 | 238 | 238 | ..... |
| Kentucky | 11,936 | 2 | 240 | 240 | ..... |
| Louisiana | 14,871 | 3 | 445 | 430 | 15 |
| Maryland | 1,498 | 2 | 33 | 33 | ..... |
| Michigan | 11,767 | 3 | 352 | 340 | 12 |
| New Jersey | 1,253 | 2 | 27 | 27 | ..... |
| New York | 3,137 | 5 | 157 | 154 | 3 |
| Ohio | 9,676 | 3 | 291 | 291 | ..... |
| Pennsylvania | 8,076 | 4 | 326 | 326 | ..... |
| Virginia | 3,656 | 2 | 76 | 76 | ..... |
| West Virginia | 12,813 | 2 | 261 | 261 | ..... |

TABLE VIII.C.3–3—CSAPR $NO_X$ OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2023

| State | Emission budgets (tons) | New unit set-aside amount (percent) | Total new unit set-aside amount for new units (tons) | New unit set-aside amount for new units not in Indian country (tons) | Indian country new unit set-aside amount (tons) |
|---|---|---|---|---|---|
| Illinois | 8,397 | 2 | 173 | 173 | ..... |
| Indiana | 11,998 | 2 | 238 | 238 | ..... |
| Kentucky | 11,936 | 2 | 240 | 240 | ..... |
| Louisiana | 14,871 | 3 | 445 | 430 | 15 |
| Maryland | 1,498 | 2 | 33 | 33 | ..... |
| Michigan | 9,803 | 3 | 296 | 286 | 10 |
| New Jersey | 1,253 | 2 | 27 | 27 | ..... |
| New York | 3,137 | 5 | 157 | 154 | 3 |
| Ohio | 9,676 | 3 | 291 | 291 | ..... |
| Pennsylvania | 8,076 | 4 | 326 | 326 | ..... |
| Virginia | 3,656 | 2 | 76 | 76 | ..... |
| West Virginia | 11,810 | 2 | 236 | 236 | ..... |

TABLE VIII.C.3–4—CSAPR $NO_X$ OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2024 AND BEYOND

| State | Emission budgets (tons) | New unit set-aside amount (percent) | Total new unit set-aside amount for new units (tons) | New unit set-aside amount for new units not in Indian country (tons) | Indian country new unit set-aside amount (tons) |
|---|---|---|---|---|---|
| Illinois | 8,397 | 2 | 173 | 173 | ..... |
| Indiana | 9,447 | 2 | 188 | 188 | ..... |
| Kentucky | 11,936 | 2 | 240 | 240 | ..... |
| Louisiana | 14,871 | 3 | 445 | 430 | 15 |
| Maryland | 1,498 | 2 | 33 | 33 | ..... |
| Michigan | 9,614 | 3 | 287 | 277 | 10 |
| New Jersey | 1,253 | 2 | 27 | 27 | ..... |
| New York | 3,119 | 5 | 156 | 153 | 3 |
| Ohio | 9,676 | 3 | 291 | 291 | ..... |
| Pennsylvania | 8,076 | 4 | 326 | 326 | ..... |
| Virginia | 3,395 | 2 | 68 | 68 | ..... |
| West Virginia | 11,810 | 2 | 236 | 236 | ..... |

For the control periods in 2021 and 2022, EPA proposes to apply the same two-round approach for allocating allowances from each state's NUSA to eligible units as EPA has historically used in all the previous CSAPR trading programs. Under this approach, in the first round, which is carried out during the control period at issue, any eligible units in the state that operated during the preceding control period are allocated allowances in proportion to their respective emissions during that preceding control period, up to the amounts of those emissions if the NUSA contains sufficient allowances. In the second round, which is carried out after the end of the control period at issue, if the first-round allocations did not exhaust the NUSA, any eligible units in the state that commenced operation in the control period or the preceding control period are allocated additional allowances in proportion to the positive differences (if any) between their emissions during the control period and their first-round allocations, up to the amounts of those differences if the NUSA contains sufficient allowances. Any allowances remaining in the NUSA after the second round are reallocated to the existing units in the state.

For control periods in 2023 and thereafter,[157] EPA proposes to replace the two-round approach described above—for purposes of both the new Group 3 trading program and the existing CSAPR trading programs—with a one-round approach that would be carried out after the end of the control period at issue. Under the proposed one-round approach, any eligible units in the state that operated during the control period will be allocated allowances in proportion to their respective emissions during the control period, up to the amounts of those emissions if the NUSA contains sufficient allowances. EPA believes this one-round approach would be both less complex than the two-round approach and more equitable, because it would avoid potential situations under the two-round approach where the newest units may not receive any NUSA allocations. In order to provide sufficient time to carry out the one-round approach after the end of the control period, several deadlines would be extended (again, for purposes of both the new Group 3 trading program and the existing trading programs) starting with the control periods in 2023. Specifically, the deadline for EPA to promulgate a notice regarding preliminary calculations of NUSA allocations would be set at March 1 after the control period; the deadline for EPA to promulgate a notice regarding the final calculations and to record the NUSA allocations would be set at May 1 after the control period; the ''allowance transfer deadline'' by which sources must hold sufficient allowances to cover their emissions during the control period would be set at June 1 after the control period; and the date as of which each source's ''common designated representative'' is determined for purposes of the assurance provisions would be set at July 1 after the control period. The proposed changes and EPA's rationale are discussed further in section VIII.C.8.

EPA requests comment on the proposed approach for reserving portions of the budgets as new unit set-asides and allocating allowances to new units (Comment C–26).

c. Allocations to New Units in Indian Country

Clean Air Act programs on Indian reservations and other areas of Indian country over which a tribe or EPA has demonstrated that a tribe has jurisdiction generally may be implemented either by a tribe through an EPA-approved tribal implementation plan (TIP) or EPA through a FIP. Tribes may, but are not required to, submit TIPs. Under EPA's Tribal Authority Rule (TAR), 40 CFR 49.1–49.11, EPA is authorized to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit and receive EPA approval of a TIP. *See* 40 CFR 49.11(a); *see also* 42 U.S.C. 7601(d)(4). To date, no tribes have sought approval of a TIP implementing the good neighbor provision at CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. EPA has therefore determined that it is necessary and appropriate for EPA to implement the FIPs in any affected Indian reservations or other areas of Indian country over which a tribe has jurisdiction. However, there are no existing units that would qualify as ''covered units'' in Indian country located in the proposed Group 3 states under this proposal.

EPA is proposing to generally apply the CSAPR Update approach for allocating allowances to any new units located in Indian country, with parallel modifications to those described above with respect to unit-level allocations from the new unit set-asides for units not in Indian country. Under this approach, allowances to possible future new units located in Indian Country would be allocated by EPA from an Indian country new unit set-aside established for each state with Indian

[157] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised procedures starting with the 2021 control periods.

country. EPA proposes to reserve 0.1 percent of the total state budget for new units in Indian Country within that state (5 percent of the minimum 2 percent new unit set-aside,[158] without considering any increase in a state's new unit set-aside amount for planned units). Because states generally have no SIP authority in these areas, EPA would continue to handle the allocation of allowances to any sources that locate in such areas of Indian country within a state over which a tribe or EPA has demonstrated that a tribe has jurisdiction, even if the state submits a SIP to replace the applicable FIP. Unallocated allowances from a state's Indian country new unit set-aside would be returned to the state's new unit set-aside and allocated according to the methodology for that new unit set-aside.

For the control periods in 2021 and 2022, EPA proposes to apply the same two-round approach for allocating allowances from each state's Indian country NUSA to eligible units as EPA has historically used in all the previous CSAPR trading programs, and for control periods in 2023 and thereafter,[159] EPA proposes to apply a one-round approach as described above for other NUSAs. The proposed change to a one-round allocation approach for Indian country NUSAs would involve the same deadline extensions as discussed above with respect to other NUSAs and would also apply with respect to Indian country NUSAs under the existing CSAPR trading programs. Further discussion is provided in section VIII.C.8.

EPA requests comment on the proposed approach for reserving portions of the budgets as Indian country new unit set-asides and allocating allowances to new units in Indian country (Comment C–27).

d. Treatment of Allowances Allocated to Units That Cease Operations

EPA is proposing to apply the same approach followed in the CSAPR Update for reallocating allowances that were previously allocated to units that cease operations. Specifically, EPA proposes that a covered unit that does not operate for a period of two consecutive years after the start of trading program implementation will receive allowance allocations for a total of up to five years of non-operation. As in the CSAPR Update, this approach mitigates concerns that loss of allowance allocations could be an economic consideration that would cause a unit, which would otherwise retire, to continue operations in order to retain ongoing allowance allocations. Pursuant to this provision, starting in the fifth year after the first year of non-operation, EPA proposes that allowances previously allocated to such units would instead be allocated to the new unit set-aside for the state in which the non-operating unit is located. This approach allows the balance of allowance allocations to shift over time from existing units to new units, aligned with transition of the EGU fleet from older generating resources to newer ones. Allowances in the new unit set-aside that are not used by new units would be reallocated to existing units in the state. EPA proposes to retain this same CSAPR Update timeline for allowance allocation for non-operating units in this rulemaking. EPA requests comment on the proposed approach for addressing allowances allocated to units that have ceased operation (Comment C–28).

In order to accommodate a changing power sector and account for units that permanently retire and therefore no longer have emissions, EPA is taking comment on whether the NUSA should be modified such that allowances from these units that are placed in the NUSA should not be reallocated at the end of the year. Ultimately, in the absence of new units, these allowances would be redistributed to existing units. EPA seeks comment on whether allowances from retired units should remain in the NUSA rather than being redistributed to existing units, except in the event that those allowances are allocated to new units (Comment C–29).

Alternatively, in order to accommodate a changing power sector and account for the year-to-year variation in generation and potential change in usage of units over time, EPA is seeking comment on an allocation alternative (Comment C–30). Noting that budgets are based on a constant level of heat input over time and that heat input levels have generally decreased over time, EPA asks for comment on the possibility of initially distributing the average budget level of allowances per control period minus the variability limit (*i.e.,* 79 percent of budget given a variability limit of 21 percent). Then, if the actual observed heat input for a given control period is greater than the heat input amount assumed in the original allocation, additional supplemental allowances would be provided up to the assurance level (*i.e.* 121 percent of the regional emission budget). In this methodology, the actual number of allowances allocated each control period would be explicitly tied to the heat input of that same control period. As an example, consider an original allowance allocation based on 79 percent of the aggregate Group 3 budget. If, after the conclusion of the ozone season, heat input is only 3 percent below the heat input level assumed in the emission budget, EPA would then allocate allowances to cover the remaining percentage of allowances withheld from the initial allocation.

4. Transitioning From Existing CSAPR $NO_X$ Ozone Season Group 2 Trading Program

This section discusses three sets of provisions that EPA proposes to implement in order to address the transition of sources from the Group 2 trading program to the Group 3 trading program. First, to address the possibility that final action on this proposal may not become effective until after May 1, 2021, and to ensure that under those circumstances the Group 3 trading program could be implemented for the full May-September ozone season in 2021 without imposing retroactive emission reduction requirements, EPA is proposing to allocate additional allowances, and to make corresponding adjustments to states' 2021 assurance levels, so as to offset the otherwise applicable emission reduction requirements under this rulemaking for any portion of the 2021 ozone season that may occur before the final rule's effective date. Second, in order to facilitate the continued use of market-based trading programs as the compliance mechanism for sources covered by this action while ensuring an appropriate level of stringency in the Group 3 trading program, EPA is proposing a process by which certain banked CSAPR $NO_X$ Ozone Season Group 2 allowances will be converted to CSAPR $NO_X$ Ozone Season Group 3 allowances. Finally, to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this action, EPA is also proposing that the CSAPR $NO_X$ Ozone Season Group 2 allowances equivalent in amount and vintage to the previously allocated vintage year 2021–2024 CSAPR $NO_X$ Ozone Season Group 2 allowances in the new Group 3 region will be recalled.

[158] In the CSAPR rulemaking, based on analysis of a set of states that includes all the proposed Group 3 states in this action, EPA determined that among the states analyzed, in the state for which Indian country represented the largest share of the total area within the state's borders, that share was 5 percent. *See* 76 FR 48293 (December 27, 2011). EPA adopted the same 5 percent figure in the CSAPR Update. *See* 81 FR 74565–66 (May 27, 2016).

[159] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised procedures starting with the 2021 control periods.

a. Supplemental Allowance Allocations To Avoid Retroactive Emission Reduction Requirements

EPA expects to take a final action in this rulemaking by March 15, 2021 and anticipates that the final rule will be published in the **Federal Register** by early April, before the start of the 2021 ozone season on May 1, 2021. However, because of the requirements of the Congressional Review Act (CRA), 5. U.S.C. 801–808, EPA is unable at this time to predict whether the increased trading program stringency established in the final rule will take effect as of May 1, 2021. Under CRA section 801(a)(3), a ''major rule,'' as defined under the CRA, generally may not take effect sooner than 60 days after the date of publication in the **Federal Register** (or, if later, 60 days after the date on which Congress receives a report on the final rule from EPA). Under CRA section 804(2), a ''major rule'' includes any rule that the Office of Management and Budget (OMB) finds is likely to result in an annual effect on the economy of $100 million or more. Because the final action in this rulemaking is projected to result in annualized benefits greater than $100 million per year, as discussed in section IX of the preamble, it is possible that OMB could find that the final action on this proposal would be a ''major rule'' for CRA purposes, in which case the rule's effective date could occur after the start of the 2021 ozone season.

EPA proposes to find that, notwithstanding that the final rule's requirements may not be able to take effect until after May 1, 2021, it would nevertheless serve the public interest and greatly aid in administrative efficiency for most elements of the Group 3 trading program—specifically, all elements of the trading program other than the elements designed to establish more stringent emissions limitations for the sources in Group 3 states—to start on May 1, 2021. This will facilitate implementation of the Group 3 trading program in an orderly manner for the entire 2021 ozone season and reduce compliance burdens and potential confusion. Each of the CSAPR trading programs for ozone season $NO_X$ is designed to be implemented over an entire ozone season. Implementing the transition from the Group 2 trading program to the Group 3 trading program in a manner that required the covered sources to participate in the Group 2 trading program for part of the 2021 ozone season and the Group 3 trading program for the remainder of that ozone season would be complex and burdensome for sources. Attempting to address the issue by splitting the Group 2 and Group 3 requirements into separate years is not a viable approach, because EPA would have no legal basis for releasing the Group 3 sources from the emission reduction requirements found to be necessary in the CSAPR Update for a portion of the 2021 ozone season, and EPA similarly would have no legal basis for deferring implementation of the 2021 emissions reduction requirements found to be necessary under this rule until 2022. Moreover, the requirements of the Group 2 trading program and the Group 3 trading program are substantively identical as to almost all provisions, such that with respect to those provisions, a source would not need to alter its operations in any manner or face different compliance obligations as a consequence of a transition from the Group 2 trading program to the Group 3 trading program. Thus, EPA believes that no substantive concerns regarding retroactivity would arise from implementing the Group 3 trading program starting on May 1, 2021, so long as those aspects of the Group 3 trading program that *do* meaningfully differ from the analogous aspects of the Group 2 trading program—that is, the relative stringencies of the two trading programs, as reflected in the emissions budgets and associated assurance levels—are applied only as of the effective date of the final rule.

Thus, with respect to two aspects of the proposed rule, EPA proposes the following adjustments in 2021 ozone season obligations in order to ensure no new requirements are imposed on any regulated parties prior to the effective date of the final rule.

To cause the more stringent budgets of the Group 3 trading program to apply only after the effective date of the final rule, EPA proposes to make supplemental allocations of Group 3 allowances to Group 3 sources for the portion of the 2021 ozone season occurring before the effective date of the final rule. The total amount of the supplemental allowances available for allocation to the sources in each state would be calculated by multiplying the difference between the state's Group 2 and Group 3 budgets by the fraction of the 2021 ozone season, measured in days, occurring before the final rule's effective date. The state's total amount of supplemental allowances would then be allocated among the state's existing units as if the supplemental allowances had been included in the state's 2021 emissions budget for the Group 3 trading program. The allocations of supplemental allowances would be recorded at the same time as the allocations from the budget.

To cause the more stringent assurance levels of the Group 3 trading program to apply only after the effective date of the final rule, EPA proposes to include an increment in each state's assurance level for 2021 in addition to the state's emissions budget and variability limit for 2021. The amount of the increment would be computed as 1.21 times the total amount of supplemental allowances determined for the state as described above, where 1.21 is the ratio of the Group 2 state assurance levels to the Group 2 state budgets and is also the ratio of the proposed Group 3 state assurance levels to the proposed Group 3 state budgets. In the event of an exceedance of a state's assurance level, the allocations of supplemental allowances and the increment to the state's variability limit would also be taken into account for purposes of the calculations used to apportion responsibility for any exceedance of a state's assurance level among the owners and operators of the state's sources.

In all respects other than the allocation of supplemental Group 3 allowances and the addition of an increment to the states' assurance levels, EPA proposes to implement the Group 3 trading program for the 2021 control period exactly as the program would be implemented for any other control period. Thus, allocations of Group 3 allowances from each state's emissions budget to existing and new units would be made for the entire 2021 ozone season (*i.e.,* May 1, 2021 through September 30, 2021), emissions would be monitored and reported for the entire 2021 ozone season, and as of the allowance transfer deadline for the 2021 control period (*i.e.,* March 1, 2022) each source would be required to hold in its compliance account vintage-year 2021 Group 3 allowances not less than the source's emissions of $NO_X$ during the entire 2021 ozone season. Because of the supplemental allowances allocated for the portion of the 2021 ozone season before the rule's effective date, EPA proposes to find that implementing the program in this manner would substantively apply the final rule's emissions reduction requirements only from the rule's effective date. Similarly, because of the increment to the states' assurance levels for 2021, EPA proposes to find that implementing the trading program in this manner would substantively apply the final rule's more stringent assurance levels only from the rule's effective date. Moreover, any efforts undertaken by a source to reduce its emissions during the portion of the

2021 ozone season before the effective date of the rule would aid the source's compliance by reducing the amount of Group 3 allowances that the source would need to hold in its compliance account as of the allowance transfer deadline, increasing the range of options available to the source for meeting its compliance obligations under the Group 3 trading program.

EPA requests comment on the proposed approach for implementing the Group 3 trading program in a manner that would apply the substantive increases in stringency established under the final rule on and after, but not before, the final rule's effective date (Comment C–31).

b. Creation of Initial Group 3 Allowance Bank

For this rulemaking, EPA is proposing to convert allowances banked in 2017–2020 under the CSAPR NOx Ozone Season Group 2 Trading Program into a limited number of allowances that can be used for compliance in the CSAPR NOx Ozone Season Group 3 Trading Program. Any treatment of banked allowances must ensure that implementation of the Group 3 trading program will result in $NO_X$ emission reductions sufficient to address significant contribution in the 12 linked Group 3 states, while also providing industry certainty (and obtaining an environmental benefit) through continued recognition of the value of saving allowances through early reductions in emissions. EPA's approach to balancing these concerns in the CSAPR Update through the use of a conversion ratio for banked allowances from the CSAPR ozone season trading program was upheld in *Wisconsin* v. *EPA, see* 938 F.3d at 321.

Similar to the approach taken in the CSAPR update, EPA is proposing a one-time conversion of banked Group 2 allowances according to a formula which ensures that emissions in the Group 3 trading program region in the first year of the program do not exceed a specified level (defined as emissions up to the sum of the states' seasonal emissions budgets and variability limits) as a result of the use of banked allowances from the Group 2 trading program. EPA proposes to carry out the conversion no later than 180 days after the date of publication of the final action in this rulemaking in the **Federal Register**. The conversion would occur after the surrenders of allowances for compliance for the 2020 control period are completed by March 1, 2021, which is the allowance transfer deadline. The proposed conversion ratio would be calculated by a formula, the numerator of which would be the total number of banked Group 2 allowances held as of the deadline by owners or operators of facilities in Group 3 states plus banked allowances held in ''general'' accounts (*i.e.,* accounts not associated with a source), and the denominator of which would be the sum of the Group 3 states' 2022 control period variability limits proposed in this rule multiplied by the fraction of the 2021 ozone season, measured in days, occurring after the final rule's effective date. The quotient, or ratio (or a factor of 1.0000, if the quotient is less than 1.0000), would then be applied to the banked vintage year 2017–2020 Group 2 allowances in each such account to yield the number of banked allowances that would be made available to the holder of each such account for compliance under the Group 3 trading program for the 2021 control period. As discussed in section VIII.C.2, the proposed variability limits differ by year. EPA proposes to use the variability limits for the 2022 control period in the formula because 2022 is the first year in which the proposed budgets, and therefore the proposed variability limits, would reflect the full set of control technologies represented by the $1600 per ton cost level proposed to be consistent with addressing the Group 3 states' obligations under CAA section 110(a)(2)(D)(i)(I). Thus, the proposed conversion ratio formula would yield an effective starting bank of 21 percent of the aggregated 2022 Group 3 ozone season budgets for all covered states, or 21,022 allowances, adjusted to reflect any delay in implementation of the substantive increases in stringency established under the final rule beyond May 1, 2021.

EPA proposes that before carrying out the conversion of the bank of Group 2 allowances to Group 3 allowances, all general accountholders would be given an opportunity to temporarily transfer out of their general accounts any Group 2 allowances that they would prefer to retain for potential subsequent use in the Group 2 trading program. By 150 days after publication of a final rule in this rulemaking, EPA would create a common holding account for Group 2 allowances. General accountholders who hold Group 2 allowances could elect to transfer any number of their Group 2 allowances to this holding account by a deadline of 30 days after the creation of the Group 2 holding account. Group 2 allowances held in a facility compliance account could not be transferred directly to the holding account but could be transferred to a general account and then to the holding account. After the 30-day transfer window, EPA would implement a seven-day account freeze to execute the conversion. For the duration of the freeze, accountholders could not execute any transfers into or out of any general or facility compliance account that held Group 2 allowances at the beginning of the freeze. During this seven-day freeze, all Group 2 allowances held in any general or facility compliance account—but not the Group 2 allowances held in the common Group 2 holding account—would be converted to vintage year 2021 Group 3 allowances, per the conversion methodology described above. After the conversion is carried out, EPA would transfer all Group 2 allowances held in the common Group 2 holding account back to the general accounts from which they were transferred into the common Group 2 holding account.

EPA requests comment on the proposed conversion of banked 2017–2020 Group 2 allowances into a limited initial bank of Group 3 allowances. EPA also requests comment on whether the minimum conversion ratio should be a number greater than 1.0000, based on a formula that would provide an incentive to convert a minimum number of banked Group 2 allowances to Group 3 allowances, thereby preserving the stringency of the Group 2 trading program established in the CSAPR Update. Specifically, while the denominator of such a minimum ratio formula would be the same sum of the Group 3 states' variability limits under the Group 3 trading program that would be used in the primary conversion ratio formula, the numerator of the minimum ratio formula would be the total quantity of banked 2017–2020 Group 2 allowances attributable to sources in the states moving to the new Group 3 trading program (*i.e.,* the sum of the differences between the Group 3 states' budgets under the Group 2 trading program for the 2017–2020 ozone seasons and the total $NO_X$ emissions from sources in those states in the 2017–2020 ozone seasons, plus the portion of the initial bank of allowances created for the Group 2 trading program that was attributable to the variability limits of those same states under the Group 2 trading program) (Comment C–32).

c. Recall of Group 2 Allowances Allocated for Control Periods After 2020

To maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this action, EPA is also proposing to recall CSAPR $NO_X$ Ozone Season Group 2 allowances equivalent in amount and vintage to all vintage

year 2021–2024 CSAPR $NO_X$ Ozone Season Group 2 allowances previously allocated to sources or non-source entities in Group 3 states. Specifically, 60 days after the date of **Federal Register** publication of the final action in this rulemaking, EPA would establish a 30-day window for the owners or operators of sources (or the representatives of non-source entities) in Group 3 states to transfer into their relevant compliance or general accounts the number of vintage year 2021–2024 CSAPR $NO_X$ Ozone Season Group 2 allowances equal to the number that were allocated for each of these control periods (*i.e.,* 2021, 2022, 2023, and 2024) to all units at the source or to the non-unit entity. EPA intends to issue notifications and instructions to each accountholder to ensure the correct numbers of allowances of each vintage are returned. As noted in section VIII.C.7., EPA proposes not to record any allocations of Group 3 allowances to a source or other entity unless that source or entity has complied with the requirements to surrender previously allocated 2021–2024 Group 2 allowances. In addition, failure to comply with the recall provisions is proposed to be subject to potential enforcement as a violation of the Clean Air Act, in the same way that failure to hold sufficient allowances to cover emissions and failure to comply with the allowance surrender requirements of the assurance provisions in the regulations for all of the existing CSAPR trading programs is subject to such potential enforcement, with each allowance and each day of the control period constituting a separate violation.

EPA requests comment on the proposed approach for recalling 2021–2024 Group 2 allowances previously allocated to sources and other entities in Group 3 states (Comment C–33).

5. Compliance Deadlines

As discussed in section V.C. of this preamble, the proposed rule requires sources to comply with the revised respective $NO_X$ emission budgets for the 2021–2024 ozone seasons (May 1 through September 30 of each year) in order to ensure that these necessary $NO_X$ emission reductions are implemented to assist in downwind states' attainment and maintenance of the 2008 ozone NAAQS by the 2021 Serious area attainment date. Thus, under the new CSAPR NOx Ozone Season Group 3 Trading Program proposed by EPA in this rulemaking, the first control period is the 2021 ozone season (*i.e.* May 1, 2021, through September 30, 2021). This initial control period is coordinated with the attainment deadline for the 2008 standard, and the proposed rule includes provisions to ensure that all necessary reductions occur at sources within each individual state.

Under all CSAPR trading programs, compliance at the source level is achieved by each source surrendering by a compliance deadline—defined in the regulations at 40 CFR 97.802 as the ''allowance transfer deadline''—a number of allowances equal to the source's total emissions for the preceding ozone-season control period. For the control periods in 2021 and 2022, EPA proposes that the deadline by which sources must hold Group 3 allowances in their facility compliance accounts at least equal to their emissions is March 1 of the year following the control period. This deadline is the same as the current deadline for holding allowances under all the existing CSAPR trading programs. Under this coordinated deadline, March 1, 2022 is the proposed date by which Group 3 sources will be required to hold Group 3 allowances for compliance purposes of the 2021 ozone season control period. Likewise, the proposed date for purposes of the 2022 ozone season is March 1, 2023.

For control periods in 2023 and thereafter,[160] EPA proposes that the allowance transfer deadline for the Group 3 trading program—and for all the other CSAPR trading programs [161]—be moved from March 1 to June 1 of the year after the control period. The reason for the proposed change is to accommodate a proposed change in the methodology and schedule for allocating allowances to units from the new unit set-asides that would start with the 2023 control periods. Under that revised methodology, allowances from the new unit set-asides would be recorded in units' compliance accounts by May 1 of the year following the control period, and some additional period after that date is needed to allow for allowance purchases in case a source receives fewer allowances from the new unit set-aside than anticipated. Under the current regulations at 40 CFR 97.812, the deadline for recording second-round allocations from the new unit set-asides is February 15, two weeks before the March 1 allowance transfer deadline. EPA believes sources would have greater trading flexibility if this interval were extended to a full month, resulting in the proposed allowance transfer deadline of June 1. Extension of the allowance transfer deadline is not expected to have any impact on the achievement of the CSAPR trading programs' environmental objectives because it would not affect the quantities of allowances that sources will be required to hold as of the deadline or the total quantities of allowances that will be made available for compliance in advance of the deadline. Further discussion is provided in sections VIII.C.3.b. and VIII.C.8.

EPA requests comment on the proposed compliance deadlines (Comment C–34).

6. Monitoring and Reporting

Monitoring and reporting in accordance with the provisions of 40 CFR part 75 are required for all units subject to all the CSAPR trading programs, which includes all units covered under this proposed rule. Consistent with these existing requirements, EPA proposes that the monitoring system certification deadline by which monitors are installed and certified for compliance use under the CSAPR NOx Ozone Season Group 3 Trading Program generally will be May 1, 2021, the beginning of the first control period in this proposed rule, with potentially later deadlines for units that commence commercial operation less than 180 days before that date. Units already in compliance with monitoring system certification requirements for the Group 2 trading program would not have to undertake any additional activities to certify their monitoring systems for the Group 3 trading program. Similarly, EPA proposes that the first period in which emission reporting is required would be the quarter that includes May 1, 2021, (*i.e.,* the second quarter of the year that covers April, May, and June). These monitoring and reporting requirements and deadlines are analogous to the current deadlines under the CSAPR NOx Ozone Season Group 2 Trading Program.

Under 40 CFR part 75, a unit has several options for monitoring and reporting, including the use of a CEMS; an excepted monitoring methodology based in part on fuel-flow metering for certain gas- or oil-fired peaking units; low-mass emissions monitoring for certain non-coal-fired, low emitting

[160] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised deadline starting with the 2021 control periods.

[161] As discussed in section VIII.C.8.b., in order to minimize unnecessary differences between the CSAPR trading programs and the similarly structured Texas $SO_2$ Trading Program, EPA is also proposing to revise the allowance transfer deadline under the Texas $SO_2$ Trading Program as of the 2023 control period. However, EPA is not proposing to revise the allowance transfer deadline under the Acid Rain Program for $SO_2$ emissions (which is February 29 in leap years and March 1 in other years).

units; or an alternative monitoring system approved by the Administrator through a petition process. In addition, sources can submit petitions to the Administrator for alternatives to individual monitoring, recordkeeping, and reporting requirements specified in 40 CFR part 75. Each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits and 24-hour calibrations. In addition, when a monitoring system is not operating properly, standard substitute data procedures are applied and result in a conservative estimate of emissions for the period involved.

Further, 40 CFR part 75 requires electronic submission of quarterly emissions reports to the Administrator, in a format prescribed by the Administrator. The reports will contain all of the data required concerning ozone season $NO_X$ emissions.

Units currently subject to the CSAPR NOx Ozone Season Group 2 Trading Program are required to monitor and report $NO_X$ emissions in accordance with 40 CFR part 75, so covered sources in the Group 3 trading program will simply continue the same monitoring and reporting practices as required by 40 CFR part 75 under the Group 2 trading program.

7. Recordation of Allowances

EPA is proposing to establish a schedule for recording allocations of vintage-year 2021 CSAPR $NO_X$ Ozone Season Group 3 allowances to ensure that affected sources are allocated vintage year 2021 allowances as soon as practicable and well before the 2021 ozone season compliance deadline (March 1, 2022). EPA is also proposing a schedule for recording allocations of vintage-year 2022 CSAPR $NO_X$ Ozone Season Group 3 allowances that accommodates sources' expectation to receive these allowance allocations soon after the publication of this final rule while also ensuring that states have the opportunity to develop and submit to EPA SIP revisions concerning allocations of allowances for vintage year 2022 and later.

Specifically, allocations to existing units for the first control period outlined in this proposal (*i.e.* the 2021 ozone season) will be recorded no later than 120 days after the publication of the final rule in the **Federal Register**. EPA will also record allocation of vintage year 2022 allowances by this deadline for all units except those in states that provided to EPA, by 90 days after the publication of the final rule, a letter indicating an intent to submit a SIP revision that, if approved, would substitute state-determined allocations for the default allocations determined by EPA for the 2022 control period. EPA proposes that the deadline for states to submit to EPA such SIP revisions will be 180 days after publication of the final rule. If states that notified EPA of their intent to submit a SIP revision fail to submit such a SIP by the SIP submission deadline, EPA will record vintage year 2022 FIP allocations to those states no later than 210 days after the publication of the final rule. No later than one year after the publication of the final rule, EPA will record the SIP allocations of vintage year 2022 Group 3 allowances for states with approved SIP revisions. By this same one-year deadline, EPA will record the FIP allocations of vintage year 2022 Group 3 allowances for states whose SIP revisions are not approved by EPA.

The recordation deadline for vintage year 2021 allowances to existing units is anticipated to be approximately 7 months before the date by which sources are required to hold allowances sufficient to cover their emissions for that first control period (March 1, 2022, as discussed above). This schedule allows sources ample time to engage in allowance trading activities consistent with their preferred compliance strategies. EPA proposes to record vintage year 2023 and 2024 Group 3 allowance allocations to existing units by July 1, 2022, and vintage year 2025 and 2026 Group 3 allowance allocations by July 1, 2023. By July 1 of each year after 2023, EPA proposes to record Group 3 allowance allocations to existing units for the control period in the third year after the year of recordation. The proposed recordation deadlines would apply to recordation of both allocations based on the default proposed allocation provisions and allocations provided by states pursuant to approved SIP revisions.

As an exception to all of the recordation deadlines that would otherwise apply, EPA proposes not to record any allocations of Group 3 allowances to a source or other entity unless that source or entity has complied with the requirements to surrender previously allocated 2021–2024 Group 2 allowances. The surrender requirements are necessary to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this proposal. EPA believes that conditioning the recordation of Group 3 allowances on compliance with the surrender requirements would spur compliance and would not impose an inappropriate burden on sources.

EPA notes that the proposal to generally record allocations to existing units three years in advance under the new Group 3 trading program represents a change from the historical recordation schedules for allocations to existing units under the other CSAPR trading programs, which have generally provided for such allocations to be recorded four years in advance. In this action, EPA is proposing to revise the recordation schedules under the other CSAPR trading programs, as well as the similarly structured Texas $SO_2$ Trading Program, so as to generally record allocations to existing units three years in advance. The proposed change would take effect with allocations for the 2025 control periods, which would be recorded by July 1, 2022, instead of by July 1, 2021. The reason for the proposed change is the discovery of a timing conflict in all the CSAPR trading programs between the requirement to record four years in advance and the separate provisions governing allocations to existing units that have ceased operations. Under those separate provisions, EPA is unable to determine whether some existing units are entitled to continue to receive their allowance allocations more than three years in advance, and thus EPA does not have the information necessary to record all the allocations four years in advance. Further discussion of this proposed revision to the schedule for recording allocations to existing units is provided in section VIII.C.8.a.

With respect to allocations of allowances from the new unit set-asides and Indian country new unit set-asides, for the 2021 and 2022 control periods, EPA proposes to record these allocations under the Group 3 trading program in two rounds, by August 1 of the control period (or 120 days after publication of the final rule in this action, if later) and by February 15 of the year following the control period. This schedule generally matches the recordation schedule for allocations of allowances from the analogous set-asides under the Group 2 trading program and the other CSAPR trading programs. Starting with the 2023 control period,[162] EPA proposes to adopt a new one-round process for determining allocations from the new unit set-asides and Indian country new unit set-asides, and consistent with that revised allocation process EPA proposes to

[162] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised NUSA allocation process and deadlines starting with the 2021 control periods.

record all allocations from these set-asides as of May 1 in the year following the control period, in both the Group 3 trading program and the existing CSAPR trading programs, and both where the allocations are determined by EPA and where the allocations are provided by states pursuant to approved SIP revisions. Further discussion is provided in sections VIII.C.3.b. and VIII.C.8.b.

EPA requests comment on the proposed recordation deadlines (Comment C–35).

8. Proposed Conforming Revisions to Regulations for Existing Trading Programs

As discussed elsewhere in this preamble, in most respects, but not in every respect, the provisions of the proposed the CSAPR $NO_X$ Ozone Season Group 3 Trading Program at 40 CFR part 97, subpart GGGGG, parallel the current provisions of the other CSAPR trading programs [163] at subparts AAAAA through EEEEE established in the CSAPR rulemaking and the CSAPR Update and, to a somewhat lesser extent, the provisions of the similarly structured Texas $SO_2$ Trading Program established at subpart FFFFF. This section discusses the proposed provisions of the new trading program that differ from the current provisions of the existing trading programs, beyond the provisions discussed in section VIII.C.4. addressing the transition to the new trading program. This section also discusses various minor proposed corrections and clarifications to the existing regulations.

To clarify and facilitate administration of the regulations for all of EPA's trading programs in 40 CFR part 97, and to maintain their parallel nature to the extent possible, EPA is proposing in this action to amend the regulations for the existing trading programs to reflect certain revisions as noted in the sections of this preamble describing the proposed new Group 3 trading program. Section VIII.C.8.a. addresses the proposed revisions discussed in section VIII.C.7. to address a timing conflict in the current regulations for all of the existing programs. Section VIII.C.8.b. addresses the proposed revisions discussed in sections VIII.C.3.b. and VIII.C.3.c. to simplify and improve the process for allocating allowances from the new unit set-asides under the existing CSAPR programs. Section VIII.C.8.c. addresses an additional minor revision to facilitate the reallocation of any incorrectly allocated allowances and also discusses proposed small corrections to the previously published amounts of certain new unit set-asides. It is EPA's intent for the regulations for all the trading programs in 40 CFR part 97 to continue to be as consistent in design as possible. For this reason, if the existing trading programs are not amended to include the revised provisions discussed in this section, EPA requests comment on instead maintaining the parallel nature of the various trading programs by finalizing the new trading program in subpart GGGGG not as proposed, but as modified to reflect the comparable current provisions of the existing CSAPR trading programs in subparts AAAAA through EEEEE without the revised provisions that are discussed in this section and reflected in the currently proposed regulatory text for new subpart GGGGG and discussed in this section (Comment C–36).

In this action, EPA is not reopening or requesting comment on the regulations for any of the existing trading programs in 40 CFR part 97, subparts AAAAA through FFFFF, except with respect to specific revisions to these subparts proposed in this section, as well as the revisions to the regulations for the Group 2 trading program discussed in section VIII.C.4. that address the transition from the Group 2 trading program to the Group 3 trading program.

a. Resolution of Timing Conflict Between Certain Existing Provisions

Consistent with the provisions of the new CSAPR trading program proposed in this action, EPA proposes to amend the regulations for the existing CSAPR trading programs and the Texas $SO_2$ Trading Program to resolve a timing conflict between the provisions that set deadlines for recordation of allowances allocated to existing units and the provisions that govern allocations of allowances to units that have ceased operation for the control periods in at least two consecutive years. The current recordation provisions in all of the trading programs generally require EPA to record allocations of allowances to existing units four years in advance of the control periods for which the allowances are being allocated. For example, on July 1, 2020, EPA recorded allocations to most existing units of allowances for use in the 2024 control periods for all the existing trading programs. However, other provisions of all the trading programs require EPA not to record allocations to existing units that do not operate for two consecutive control periods, starting with the fifth control period after the first control period in which the unit did not operate. For example, if a unit that would otherwise receive allocations as an existing unit does not operate in the 2019 and 2020 control periods, the unit will continue to receive allocations for the control periods in 2019 through 2023 but will no longer be entitled to receive allocations for control periods in 2024 and thereafter. These two sets of timing requirements are in conflict, as demonstrated by the examples just presented: as of the July 1, 2020 deadline to record allocations for the 2024 control periods, EPA could not yet know whether all units that did not operate in 2019 would resume operation later in 2020, and EPA therefore could not yet know whether all such units would be entitled to receive allocations for the 2024 control periods or not.[164]

To address the timing conflict described above, EPA is proposing to amend the regulations for each of the CSAPR trading programs and the Texas $SO_2$ Trading Program to generally require recordation of allowances allocated to existing units to take place three years rather than four years in advance of the control period for which allowances are being allocated. Returning to the examples above, if these proposed amendments had been in effect with respect to allocations for the control periods in 2024, EPA would not have been required to record allocations for the 2024 control period until July 1, 2021, by which time complete information on all units' operations in 2019 and 2020 will be available. Relatedly, for states that determine allocations of allowances to their sources under approved SIP revisions, EPA is proposing to amend the deadlines by which the states must submit the allocations to EPA for recordation to make the submissions due three years instead of four years before the applicable control period.[165]

[163] The existing CSAPR trading programs and their respective subparts of 40 CFR part 97 are: CSAPR $NO_X$ Annual Trading Program (subpart AAAAA), CSAPR $NO_X$ Ozone Season Group 1 Trading Program (subpart BBBBB), CSAPR $SO_2$ Group 1 Trading Program (subpart CCCCC), CSAPR $SO_2$ Group 2 Trading Program (subpart DDDDD), and CSAPR $NO_X$ Ozone Season Group 2 Trading Program (subpart EEEEE).

[164] Because the 4-years-in-advance recordation schedule was phased in, the conflict with the provision addressing units that have ceased operation did not affect recordation activities under any CSAPR program until 2018. To date, EPA has addressed the conflict by deferring recordation of allocations to certain units past the applicable recordation deadlines until all information needed to determine whether the units are entitled to receive the allocations becomes available.

[165] Because states' deadlines for submission of SIP revisions under the CSAPR regulations are based on the deadlines by which they must submit their subsequent state-determined allowance allocations, in some circumstances the proposed revision to the deadline for submitting allowance

Continued

The amended recordation and submission schedules are proposed to be effective beginning with recordation of allocations for control periods in 2025 and would apply to EPA's schedule for recording not only the allocations determined by EPA under the federal CSAPR trading programs but also the allocations determined by states or EPA under state CSAPR trading programs that are similarly recorded by EPA. EPA believes these proposed amendments address the timing conflict in the existing trading program regulations in a manner that is as consistent as possible with the other provisions of the regulations, because while the amendments would alter the point in time at which trading program participants receive allowances, the amendments would not alter the quantities of allowances received by any participant in any of the existing trading programs. In contrast, the only simple alternatives for resolving the timing conflict—either shortening the period of non-operation that would cause a unit to lose its allocation from two years to one year or lengthening the period for which non-operating units would retain their allowance allocations from five years to six years—would cause changes in the amounts of allowances received by some trading program participants, and some stakeholders might view those changes as inequitable or undesirable for other policy reasons.

EPA requests comment on the proposed amendments to the deadlines for EPA to record allowance allocations and for states with approved CSAPR SIP revisions to submit their state-determined allowance allocations to EPA (Comment C–37). Further details on the specific regulatory provisions that would be affected by the proposed revisions are provided in section X.D. of the preamble.

b. Modifications to NUSA Provisions

Consistent with the provisions of the new CSAPR trading program proposed in this action for ozone season emissions of $NO_X$ from sources in Group 3 states, EPA proposes to amend the regulations for the existing CSAPR trading programs governing allocations of allowances to units from NUSAs and Indian country NUSAs to reduce the potential for inequitable outcomes and to clarify and simplify the regulations.

The current regulations provide for a two-round allocation process. For purposes of the first round, a unit is generally eligible to receive allocations from the NUSA for its state regardless of when it commenced commercial operation, as long as either no allocation of allowances to the unit as an existing unit was previously determined [166] or the unit is no longer entitled to receive its previously determined allocation as an existing unit. The first-round allocations are calculated during the control period at issue and are proportional to the eligible units' emissions during the preceding control period, up to the amount of allowances available in the NUSA. EPA performs preliminary calculations and publishes a notice by June 1, provides an opportunity for objections, and then adjusts the calculations as necessary, issues a final notice, and records the allocations by August 1 of the control period.

If any allowances remain in the NUSA after the first round, EPA carries out a second round, for which eligibility is limited to units that commenced commercial operation in the year of the control period at issue or the preceding year. The second-round allocations are calculated early in the year after the year of the control period at issue (very shortly after the January 30 deadline for submission of emissions data for October through December) and are proportional to the positive differences, if any, between the eligible units' emissions during the control period at issue and the amounts of any allocations the units received in the first round, up to the remaining amount of allowances available in the NUSA. Any allowances remaining after the second round are allocated to existing units in the state in proportion to their previous allocations. EPA makes a preliminary identification of eligible units and publishes a notice by December 15, provides an opportunity for objections, and then performs the calculations, issues a final notice, and records the allocations by February 15 following the year of the control period, two weeks before the current March 1 allowance transfer deadline.

As indicated in the description above, the current procedures have the potential to produce inequitable results, where some units may receive allowances in the first round (based on their emissions in the preceding control period) that exceed the amounts needed to cover their emissions during the control period at issue, while other units that commenced operation more recently may not receive any allowances in either the first round (because the units had no covered emissions in the preceding control period) or the second round (because the NUSA may have been exhausted in the first round). Further, based on the experience of administering the two-round NUSA allocation process since 2015, EPA believes the current procedures are unnecessarily complex and cause confusion for some market participants.

To simplify the NUSA allocation process and eliminate the potential inequities noted, EPA proposes to amend the regulations for the existing CSAPR programs to replace the current two-round NUSA allocation process with a one-round process that would allocate allowances to all eligible units in proportion to their emissions in the control period at issue. The amended provisions are proposed to be effective beginning with NUSA allocations for the control periods in 2023. Under the proposed procedures, which would apply to both NUSAs and Indian country NUSAs, EPA would perform preliminary calculations and issue a notice by March 1 of the year after the control period at issue, one month after the January 30 deadline for submission of the required emission data. After providing an opportunity for objections, EPA would make any necessary adjustments, issue a final notice, and record the allowances by May 1. To accommodate this process, the proposed amendments would also revise the allowance transfer deadline (*i.e.,* the date by which all covered sources must hold allowances in their compliance accounts sufficient to cover their emissions during the preceding control period) from March 1 of the year following the control period to June 1. In coordination with the revised recordation deadlines, EPA also proposes to extend the deadline for states to submit to EPA their state-determined allocations for new units from July 1 in the year of the control period to April 1 in the year following the control period. Finally, although the Texas $SO_2$ Trading Program does not have NUSA provisions, in order to minimize unnecessary differences between the deadlines for analogous provisions in that program and the CSAPR programs, EPA also proposes to revise the Supplemental Allowance Pool recordation deadline and the allowance transfer deadline under the Texas $SO_2$ Trading Program to May 1 and June 1, respectively, of the year after the control period.

The proposed revisions to the NUSA allocation procedures would also allow for related simplification of the CSAPR trading programs' assurance provisions.

allocations would also effectively extend the deadline for such a SIP revision. *See, e.g.,* 40 CFR 52.38(a)(4)(ii), (a)(5)(vi).

[166] A determination that a unit should be allocated zero allowances is considered an allocation. *See, e.g.,* 40 CFR 97.402 (definition of ''allocate or allocation'').

Under the current assurance provisions, when emissions in a state for a given control period exceed the state's assurance level, if there are any units in the state that operated during the control period but that did not receive an actual allowance allocation either as an existing unit or from the NUSA, the regulations require EPA to publish a notice calling for the owners and operators of such units to submit certain information which EPA uses to determine imputed allowance allocations for the units. EPA then uses the imputed allowance allocations for these units, together with the actual allowance allocations for other units, to apportion responsibility for the assurance level exceedance among the owners and operators of all the state's units. If the proposed amendments to the NUSA allocation process are adopted, all units that have covered emissions during any control period would receive allocations either as an existing unit or from the NUSA, making the procedures for determining imputed allocations unnecessary. Accordingly, EPA proposes to simplify the assurance provisions for all of the existing CSAPR trading programs by removing the requirement for EPA to issue the additional notice just discussed, starting with the 2023 control periods.[167] EPA also proposes to revise the date as of which the ''common designated representative'' for a group of sources is determined for purposes of the assurance provisions from April 1 to July 1 of the year following the control period, preserving that date's current position of being one month after the allowance transfer deadline. This revision would maintain the existing coordination between these two regulatory deadlines and would apply to all the existing CSAPR trading programs as well as the Texas $SO_2$ Trading Program.

EPA is proposing to make the changes to the NUSA allocation provisions, assurance provisions, and related deadlines effective as of the 2023 control period. The 2023 control period is the first control period by which it will be possible for states to fully replace the FIP requirements that are proposed in this action with a SIP revision. In the event that any states prefer the existing two-round NUSA allocation process, they would be able to include such a process in their state rules for determining allowance allocations and submit those state rules to EPA for approval in a SIP revision. However, EPA believes it is essential that the same deadlines apply to all participants in a given CSAPR trading program, and that it is very desirable for the deadlines to be the same across all the CSAPR trading programs. EPA therefore proposes to apply all of the amended deadlines described above to all states and all sources participating in all of the CSAPR trading programs under both FIPs and SIPs as of the 2023 control periods.

EPA requests comment on the proposed revisions discussed above regarding the NUSA provisions and the associated revisions to the assurance provisions, the allowance transfer deadline, the deadline for EPA to record NUSA allocations and/or Supplemental Allowance Pool allocations, the deadline for states to submit state-determined allocations of allowances to new units, and the date for determination of a common designated representative for purposes of the assurance provisions. In addition to requesting comment on applying these revisions as of the 2023 control periods as proposed, EPA also specifically requests comment on whether it would be preferable to apply the revisions as of the 2021 control periods, in the new Group 3 trading program as well as the existing CSAPR trading programs and, to the extent applicable, the Texas $SO_2$ Trading Program (Comment C–38). Further details on the specific regulatory provisions that would be affected by the proposed revisions are provided in section X.D. of the preamble.

c. Minor Corrections and Clarifications to Existing Regulations

EPA is proposing two additional minor corrections and clarifications to the NUSA provisions in the existing CSAPR trading programs. The first minor revision addresses circumstances where allowances that are determined to have been allocated incorrectly are recalled and added to the NUSA for reallocation. The current regulations provide for the recalled allowances to be reallocated through the NUSA allocation process for the same control period for which the allowances were originally allocated incorrectly. Because some corrections may occur after the NUSA allocation process for a control period has already have been completed, EPA proposes to revise these provisions to also allow the recalled allowances to be reallocated as part of the NUSA allocation process for a subsequent control period.

The second minor proposed revision to the NUSA provisions concerns the specific numbers of allowances identified as the NUSA amounts for several states under the existing CSAPR programs established in the CSAPR rulemaking.[168] Following the promulgation of the CSAPR regulations in August 2011, EPA issued two rules revising the amounts of the emissions budgets, NUSAs, and Indian country NUSAs for several states.[169] Subsequent to these rule revisions, EPA recalculated the allocations to individual existing units and published a notice of data availability establishing the new allocations.[170] However, because of rounding differences, in certain instances the sum of the recalculated allocations to the individual units in a state plus the amounts identified in the regulations for the NUSA and Indian country NUSA for the state does not exactly equal the state budget.[171] In this action, EPA is proposing to adjust the amounts of the NUSAs identified in the regulations for control periods in future years up or down by the amount needed to eliminate the rounding differences. The sizes of the proposed NUSA adjustments range from 1 to 17 allowances. These revisions would not affect the amounts of any state emissions budgets.

EPA requests comment on the proposed corrections and clarifications described above. Further details on the specific regulatory provisions that would be affected by the proposed revisions are provided in section X.D. of the preamble (Comment C–39).

*D. Submitting a SIP*

States may replace a FIP with a SIP under the Clean Air Act at any time if the SIP is approved by EPA, *see* CAA section 110(c)(1)(B). EPA has established certain specialized provisions for replacing FIPs with SIPs within all of the CSAPR trading programs, including the use of so-called ''abbreviated SIPs'' and ''full SIPs,'' *see* 40 CFR 52.38(a)(4)-(5) and (b)(4), (5), (8), and (9); 40 CFR 52.39(e), (f), (h), and (i). Under the proposed new or amended FIPs for the 12 states whose sources

[167] There are currently no analogous provisions in the Texas $SO_2$ Trading Program.

[168] This proposed revision affects the CSAPR $NO_X$ Annual, $NO_X$ Ozone Season Group 1, $SO_2$ Group 1, and $SO_2$ Group 2 trading programs established in the CSAPR rulemaking but does not affect the CSAPR $NO_X$ Ozone Season Group 2 program established in the CSAPR Update rulemaking.

[169] *See* 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012).

[170] *See* 79 FR 71674 (December 3, 2014).

[171] To date, EPA has addressed the rounding differences through the NUSA administration process by allocating whatever amounts of allowances remain in the states' budgets after allocations to existing units instead of allocating the specific amounts of allowances stated as the amounts of the states' NUSAs in the regulations. Thus, the proposed amendments would simply clarify the regulations and bring them into conformance with current practice.

would participate in the new CSAPR NOx Ozone Season Group 3 Trading Program, ''abbreviated'' and ''full'' SIP options continue to be available. An ''abbreviated SIP'' allows a state to submit a SIP revision that would modify allocation provisions in the ozone season $NO_X$ trading program that is then incorporated into the FIP to allow the state to substitute its own allocation provisions. A ''full SIP'' allows a state to adopt a trading program meeting certain requirements that would allow sources in the state to continue to use the EPA-administered trading program through an approved SIP revision, rather than a FIP. In addition, as under the CSAPR and the CSAPR Update, EPA proposes to provide states with an opportunity to adopt state-determined allowance allocations for existing units for the second control period under this rule—in this case, the 2022 control period—through streamlined SIP revisions. *See* 76 FR 48326–48332 for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

1. SIP Option To Modify 2022 Allocations

As under the CSAPR and the CSAPR Update, EPA proposes to allow a state to submit a SIP revision establishing allowance allocations for existing units in the state for the second control period of the new requirements, 2022, to replace the EPA-determined default allocations. The process would be the same process used at the start of other CSAPR trading programs but with slightly longer deadlines, *i.e.,* a state would submit a letter to EPA within 90 days after publication of the final rule indicating its intent to submit a complete SIP revision within 180 days after publication of the final rule. The SIP would provide in an EPA-prescribed format a list of existing units and their allocations for the 2022 control period. If a state does not submit a letter of intent to submit a SIP revision, the EPA-determined default allocations would be recorded by 120 days after publication of the final rule. If a state submits a timely letter of intent but fails to submit a SIP revision, the EPA-determined default allocations would be recorded by 30 days after the SIP submittal deadline. If a state submits a timely letter of intent followed by a timely SIP revision that is approved, the approved SIP allocations would be recorded by one year after publication of the final rule.

2. SIP Option To Modify Allocations in 2023 and Beyond

For the 2023 control period and later, EPA proposes that states in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program can modify the EPA-determined default allocations with an approved SIP revision. EPA proposes that the SIP submittal deadline be December 1, 2021. The deadline for states to submit state-determined allocations for 2023 and 2024 under an approved SIP would be June 1, 2022, and the deadline for EPA to record those allocations would be July 1, 2022. Under the proposed new deadlines, a state could submit a SIP revision for 2025 and beyond control periods by December 1, 2022, with state allocations for the 2025 and 2026 control periods due June 1, 2023, and EPA recordation of the allocations by July 1, 2023. For the 2023 control period and later, SIPs could be full or abbreviated SIPs. As discussed in section VIII.F.3. below, states would also have the option to expand applicability to include EGUs between 15 MWe and 25 MWe or, in the case of states subject to the $NO_X$ SIP Call, large non-EGU boilers and combustion turbines. Inclusion of the large non-EGUs would serve as a mechanism to address the state's outstanding regulatory obligations under the $NO_X$ SIP Call with respect to those sources, and the state would be allowed to allocate a defined quantity of additional Group 3 allowances because of the expanded set of sources. See above and 76 FR 48326–48332 for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

3. SIP Revisions that Do Not Use the New Group 3 Trading Program

States can submit SIP revisions to replace the FIP that achieve the necessary emission reductions but do not use the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. For a transport SIP revision that does not use the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, EPA would evaluate the transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the necessary emission reductions (*i.e.,* reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. In order to best ensure its approvability, the SIP revision should include the following general elements: (1) A comprehensive baseline 2021 statewide $NO_X$ emission inventory (which includes existing control requirements), which should be consistent with the 2021 emission inventory that EPA would use when finalizing this rulemaking to calculate the required state budget (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emission reduction obligation and a demonstration showing when each measure would be in place to meet the 2021 and successive control periods; (3) fully-adopted state rules providing for such $NO_X$ controls during the ozone season; (4) for EGUs greater than 25 MWe, 40 CFR part 75 monitoring, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (*see* 40 CFR part 51 subpart K (''source surveillance'' requirements)); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emission reductions in time to meet the 2021 compliance deadline. The SIPs must meet procedural requirements under the Act, such as the requirements for public hearing, be adopted by the appropriate state board or authority, and establish by a practically enforceable regulation or permit a schedule and date for each affected source or source category to achieve compliance. Once the state has made a SIP submission, EPA will evaluate the submission(s) for completeness. EPA's criteria for determining completeness of a SIP submission are codified at 40 CFR part 51 appendix V.

For further information on replacing a FIP with a SIP, see the discussion in the final CSAPR rulemaking (76 FR 48326).

4. Submitting a SIP To Participate in the New Group 3 Trading Program for States Not Included

Finally, EPA is also proposing to allow a state whose sources are required to participate in the CSAPR NOx Ozone Season Group 1 Trading Program (*i.e.,* Georgia) or a state whose sources are required to continue to participate in the CSAPR NOx Ozone Season Group 2 Trading Program (as proposed, Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin) to submit a SIP revision to require its sources to participate instead in the new Group 3 trading program. A similar option was made available to Georgia in the CSAPR Update (with respect to the Group 2 trading program) to address possible concerns expressed by some commenters that if sources in Georgia were not allowed to trade with sources in other states, the allowances issued to the sources in Georgia would otherwise

be of limited use. *See* 40 CFR 52.38(b)(6). The proposed option in this rulemaking, similar to the option created in the CSAPR Update, would require the state to adopt into its SIP a more stringent budget reflecting emission levels at higher dollar per ton emission reduction costs comparable to the dollar per ton emission reduction costs used to establish the budgets for states whose sources are proposed to be subject to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program described in this proposal.

*E. Title V Permitting*

This proposed rule, like the CSAPR and the CSAPR Update, does not establish any permitting requirements independent of those under Title V of the CAA and the regulations implementing Title V, 40 CFR parts 70 and 71.[172] All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with the applicable requirements of the CAA, including the requirements of the applicable SIP. CAA sections 502(a) and 504(a), 42 U.S.C. 7661a(a) and 7661c(a). The ''applicable requirements'' that must be addressed in title V permits are defined in the title V regulations (40 CFR 70.2 and 71.2 (definition of ''applicable requirement'')).

EPA anticipates that, given the nature of the units subject to this proposed rule and given that all of the units proposed to be covered here are already subject to the CSAPR Update, most if not all of the sources at which the units are located are already subject to title V permitting requirements. For sources subject to title V, the interstate transport requirements for the 2008 ozone NAAQS that are applicable to them under the proposed new or amended FIPs would be ''applicable requirements'' under title V and therefore must be addressed in the title V permits. For example, requirements concerning designated representatives, monitoring, reporting, and recordkeeping, the requirement to hold allowances covering emissions, the assurance provisions, and liability are ''applicable requirements'' that must be addressed in the permits.

Title V of the CAA establishes the basic requirements for state title V permitting programs, including, among other things, provisions governing permit applications, permit content, and permit revisions that address applicable requirements under final FIPs in a manner that provides the flexibility necessary to implement market-based programs such as the trading programs established by the CSAPR and the CSAPR Update and this proposed rule. 42 U.S.C. 7661a(b); 40 CFR 70.6(a)(8) & (10); 40 CFR 71.6(a)(8) & (10).

In the CSAPR and the CSAPR Update, EPA established standard requirements governing how sources covered by that rule would comply with title V and its regulations.[173] 40 CFR 97.506(d) and 97.806(d). For any new or existing sources under this proposed rule establishing the Group 3 program, identical title V compliance provisions would apply, just as they would have in the CSAPR NOx Ozone Season Group 2 Trading Program. For example, the title V regulations provide that a permit issued under title V must include ''[a] provision stating that no permit revision shall be required under any approved . . . emissions trading and other similar programs or processes for changes that are provided for in the permit.'' 40 CFR 70.6(a)(8) and 71.6(a)(8). Consistent with these provisions in the title V regulations, in the CSAPR and the CSAPR Update, EPA included a provision stating that no permit revision is necessary for the allocation, holding, deduction, or transfer of allowances. 40 CFR 97.506(d)(1) and 97.806(d)(1). This provision is also included in each title V permit for an affected source. This proposed rule maintains the approach taken under the CSAPR and the CSAPR Update that allows allowances to be traded (or allocated, held, or deducted) without a revision to the title V permit of any of the sources involved.

Similarly, this proposed rule would also continue to support the means by which a source in a CSAPR trading program can use the title V minor modification procedure to change its approach for monitoring and reporting emissions, in certain circumstances. Specifically, sources may use the minor modification procedure so long as the new monitoring and reporting approach is one of the prior-approved approaches under the CSAPR and the CSAPR Update (*i.e.,* approaches using a continuous emission monitoring system under subparts B and H of Part 75, an excepted monitoring system under appendices D and E to Part 75, a low mass emissions excepted monitoring methodology under 40 CFR 75.19, or an alternative monitoring system under subpart E of part 75), and the permit already includes a description of the new monitoring and reporting approach to be used. *See* 40 CFR 97.506(d)(2) and 97.806(d)(2); 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B). As described in EPA's 2015 guidance, the Agency suggests in its template that sources may comply with this requirement by including a table of all of the approved monitoring and reporting approaches under the CSAPR and CSAPR Update trading programs in which the source is required to participate, and the applicable requirements governing each of those approaches. Inclusion of the table in a source's title V permit therefore allows a covered unit that seeks to change or add to its chosen monitoring and recordkeeping approach to easily comply with the regulations governing the use of the title V minor modification procedure.

Under the CSAPR and the CSAPR Update, in order to employ a monitoring or reporting approach different from the prior-approved approaches discussed previously, unit owners and operators must submit monitoring system certification applications to EPA establishing the monitoring and reporting approach actually to be used by the unit, or, if the owners and operators choose to employ an alternative monitoring system, to submit petitions for that alternative to EPA. These applications and petitions are subject to EPA review and approval to ensure consistency in monitoring and reporting among all trading program participants. EPA's responses to any petitions for alternative monitoring systems or for alternatives to specific monitoring or reporting requirements are posted on EPA's website.[174] EPA maintains the same approach in this proposed rule.

Consistent with EPA's approach under the CSAPR and the CSAPR Update, the applicable requirements resulting from the proposed new and amended FIPs, if finalized, generally would have to be incorporated into affected sources' existing title V permits either pursuant to the provisions for reopening for cause (40 CFR 70.7(f) and 71.7(f)) or the standard permit renewal provisions (40 CFR 70.7(c) and 71.7(c)).[175] For sources newly subject to

[172] Part 70 addresses requirements for state title V programs, and Part 71 governs the federal title V program.

[173] EPA has also issued a guidance document and template that includes instructions describing how to incorporate the applicable requirements into a source's Title V permit. *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_Title_V_Permit_Guidance.pdf.*

[174] *https://www.epa.gov/airmarkets/part-75-petition-responses.*

[175] A permit is reopened for cause if any new applicable requirements (such as those under a FIP) become applicable to an affected source with a remaining permit term of 3 or more years. If the remaining permit term is less than 3 years, such new applicable requirements will be added to the permit during permit renewal. *See* 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I).

title V that are affected sources under the proposed FIPs, the initial title V permit issued pursuant to 40 CFR 70.7(a) should address the final FIP requirements.

As was the case in the CSAPR and the CSAPR Update, the proposed new and amended FIPs impose no independent permitting requirements and the title V permitting process will impose no additional burden on sources already required to be permitted under title V and on permitting authorities.

*F. Relationship to Other Emission Trading and Ozone Transport Programs*

1. Existing Trading Programs

This proposed rule if adopted would end the requirements for sources in certain states to participate in the existing CSAPR NOx Ozone Season Group 2 Trading Program after the 2020 control period and require those same sources instead to participate in a new CSAPR NOx Ozone Season Group 3 Trading Program with more stringent emissions budgets. As discussed in section VIII.C.4. above, the proposal lays out certain requirements associated with this transition, including provisions to accommodate an effective date sometime after the start of the 2021 ozone season, conversion of certain banked 2017–2020 Group 2 allowances into a limited quantity of Group 3 allowances available for use in the new Group 3 trading program, and the recall of 2021–2024 Group 2 allowances previously allocated to the sources in Group 3 states. In addition, in section VIII.C.8. of this document, EPA describes certain features of the new Group 3 trading program that differ from the current features of the other CSAPR trading programs and that EPA proposes to adopt as revisions to the other CSAPR trading programs as well. A subset of those new features are also proposed to be adopted as revisions to the similarly structured Texas $SO_2$ Trading Program. Beyond these items, nothing else in this rule affects any requirements for any source under the CSAPR $NO_X$ Annual, $SO_2$ Group 1 or Group 2, or $NO_X$ Ozone Season Group 1 or Group 2 trading programs or the Texas $SO_2$ Trading Program. These trading programs all remain in place and will continue to be administered by EPA.

2. Title IV Interactions

This proposed rule if adopted would not affect any Acid Rain Program requirements. Any Title IV sources that are subject to provisions of this proposed rule would still need to continue to comply with all Acid Rain provisions. Acid Rain Program $SO_2$ and $NO_X$ requirements are established independently in Title IV of the Clean Air Act and will continue to apply independently of this proposed rule's provisions. Acid Rain sources will still be required to comply with Title IV requirements, including the requirement to hold Title IV allowances to cover $SO_2$ emissions at the end of a compliance year.

3. $NO_X$ SIP Call Interactions

States affected by both the $NO_X$ SIP Call and any final CSAPR ozone season requirements for the 2008 NAAQS will be required to comply with the requirements of both rules. This proposed rule requires $NO_X$ ozone season emission reductions from EGUs larger than 25 MWe in many $NO_X$ SIP Call states and at greater stringency than required by the $NO_X$ SIP Call. Therefore, this proposed rule would satisfy the requirements of the $NO_X$ SIP Call for these large EGUs.

The $NO_X$ SIP Call states used the $NO_X$ Budget Trading Program to comply with the $NO_X$ SIP Call requirements for EGUs serving generators with a nameplate capacity greater than 25 MWe and large non-EGU boilers and combustion turbines with a maximum design heat input greater than 250 mmBtu/hr. (In some states, EGUs serving a generator with a nameplate capacity equal to or smaller than 25 MWe were also part of the $NO_X$ Budget Trading Program as a carryover from the Ozone Transport Commission $NO_X$ Budget Program.) When EPA promulgated CAIR, it allowed states to modify that trading program and include all $NO_X$ Budget Trading Program units in the CAIR $NO_X$ Ozone Season Trading Program as a way to continue to meet the requirements of the $NO_X$ SIP Call for these sources.

In the CSAPR, however, EPA allowed states to expand applicability of the trading program to EGUs serving a generator with a nameplate capacity equal to or less than 25 MWe but did not allow the expansion of applicability to include large non-EGU sources. The reason for excluding large non-EGU sources was largely that emissions from these sources were generally much lower than the budget amount and there was concern that surplus allowances created as a result of an overestimation of baseline emissions and subsequent shutdowns (since 1999 when the $NO_X$ SIP Call was promulgated) would prevent needed reductions by the EGUs to address significant contribution to downwind air quality impacts.

Since then, states have had to find appropriate ways to continue to show compliance with the $NO_X$ SIP Call, particularly for large non-EGUs. Some states that included such sources in CAIR are still working to find suitable solutions.

Therefore, as in the CSAPR Update, EPA is proposing to allow any $NO_X$ SIP Call state affected by this proposed rule to voluntarily submit a SIP revision at a budget level that is environmentally neutral to address the state's $NO_X$ SIP Call requirement for ozone season $NO_X$ reductions from large non-EGUs. The SIP revision could include provisions to expand the applicability of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program to include all $NO_X$ Budget Trading Program units. Analysis shows that these units (mainly large non-EGU boilers, combustion turbines, and combined cycle units with a maximum design heat input greater than 250 mmBtu/hr) continue to emit well below their portion of the $NO_X$ SIP Call budget. In order to ensure that the necessary amount of EGU emission reductions occur for this proposed rule, the corresponding state ozone-season emissions budget amount could be increased by the lesser of the highest ozone season $NO_X$ emissions (in the last 3 years) from those units or the relevant non-EGU budget under the $NO_X$ SIP Call, and this small group of non-EGUs could participate in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. The environmental impact would be neutral using this approach, and hourly reporting of emissions under 40 CFR part 75 would continue. This approach would address requests by states for help in determining an appropriate way to address the continuing $NO_X$ SIP Call requirement for large boilers and turbines. EPA proposes that if this SIP-based option is finalized, the variability limits established for EGUs under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program would remain unchanged despite the inclusion of these non-EGUs. The assurance provisions established for the CSAPR $NO_X$ Ozone Season Trading Program would apply to EGUs, and emissions from non-EGUs would not affect the assurance levels.

The $NO_X$ SIP Call generally requires that states choosing to rely on large EGUs and large non-EGU boilers and turbines for meeting $NO_X$ SIP Call emission reduction requirements must establish a $NO_X$ mass emissions cap on each source and require 40 CFR part 75, subpart H monitoring or alternative monitoring. As an alternative to source-by-source $NO_X$ mass emission caps, a state may impose $NO_X$ emission rate limits on each source and use maximum operating capacity for estimating $NO_X$ mass emissions or may rely on other requirements that the state demonstrates

to be equivalent to either the $NO_X$ mass emission caps or the $NO_X$ emission rate limits that assume maximum operating capacity. Collectively, the caps or their alternatives cannot exceed the portion of the state budget for those sources. *See* 40 CFR 51.121(f)(2) and (i)(4). If EPA were to allow a state to expand the applicability of this proposed rule to include all the $NO_X$ Budget Trading Program units in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, the cap requirement would be met through the new budget and the monitoring requirement would be met through the trading program provisions, which require part 75 monitoring. Whether the option for states to include $NO_X$ Budget Trading Program units in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program through SIPs is finalized or not, EPA will work with states to ensure that $NO_X$ SIP Call obligations continue to be met. EPA requests comment on whether to authorize the states' voluntary inclusion of $NO_X$ SIP Call non-EGUs in the proposed Group 3 trading program (Comment C–40).

## IX. Costs, Benefits, and Other Impacts of the Proposed Rule

This proposed action is expected to reduce concentrations of both ground-level ozone and fine particles ($PM_{2.5}$) (see discussion in Chapter 3 of the Regulatory Impact Analysis (RIA)). EPA historically has used conclusions of the most recent Integrated Science Assessment (ISA) to inform its approach for quantifying air pollution-attributable health, welfare, and environmental impacts associated with that pollutant. There is a separate ISA for each of the criteria pollutants. The ISA synthesizes the epidemiologic, controlled human exposure and experimental evidence ''. . . useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air.''

The ISA uses a weight of evidence approach to assess the extent the evidence supports conclusions about the likelihood that a given criteria pollutant causes a given health outcome. EPA generally estimates the number and economic value of the effects for which the ISA identifies the pollutant as having ''causal'' or ''likely to be causal'' relationship. The endpoints for which the 2020 final Ozone ISA [176] and the 2019 final PM ISA [177] identified as being causal or likely causal differed in some cases from the endpoints for which those pollutants were identified as being causal or likely causal in the Ozone and PM ISAs completed for the previous NAAQS reviews (see Tables 5–5 and 5–6 in Chapter 5 of the RIA). EPA traditionally uses the ISAs' characterizations of the health and ecological literature to identify individual studies that may be of sufficient quality for use in supporting PM or ozone benefits analysis.

When updating its approach for quantifying the benefits of changes in $PM_{2.5}$ and Ozone, the Agency will incorporate evidence reported in these two recently completed ISAs and account for forthcoming recommendations from the Science Advisory Board on this issue. When updating the evidence for a given endpoint, EPA will consider the extent to which there is a causal relationship, whether suitable epidemiologic studies exist to allow quantification of concentration response functions, and whether there are robust economic approaches for estimating the value of the impact of reducing human exposure to the pollutant. Carefully and systematically reviewing the full breadth of this information requires significant time and resources. This process is still underway and will not be completed in time for this proposal. EPA intends to update its quantitative methods for estimating the number and economic value of $PM_{2.5}$ and ozone health effects in time for publication as part of the final rule. [178] However, to provide perspective regarding the scope of the estimated benefits, Appendix 5B of the RIA illustrates the potential health effects associated with the change in $PM_{2.5}$ and ozone concentrations as calculated using methods developed prior to the 2019 p.m. ISA and 2020 Ozone ISA. The values of these estimated benefits are not reflected in the estimated net benefits reported in Tables IX.4 and IX.5 below.

EPA estimated the compliance costs, emissions changes, and climate benefits that may result from the proposed rule for the years of analysis, 2021 to 2025. The estimated costs and climate benefits are presented in detail in the RIA accompanying this proposed action. EPA notes that the estimated compliance costs and climate benefits are directly associated with turning on or fully operating existing SCRs to achieve the assigned NOx emission rate, and installing state-of-the-art combustion controls. The estimated compliance costs and climate benefits also result from a small amount of generation shifting as the power system adjusts to the proposed regulatory requirements.

EPA analyzed this action's proposed emission budgets, which were developed using uniform control stringency represented by $1,600 per ton of $NO_X$ (2016$), as well as a more and a less stringent alternative. The more and less stringent alternatives differ in that they set different $NO_X$ ozone season emission budgets for the affected EGUs. The less stringent alternative uses emission budgets that were developed using uniform control stringency represented by $500 per ton of $NO_X$ (2016$). The more stringent alternative uses emission budgets that were developed using uniform control stringency represented by $9,600 per ton of $NO_X$ (2016$). Table IX.1 provides the projected 2021 and 2025 EGU emissions reductions for the evaluated regulatory control alternatives. For additional information on emissions changes in each year from 2021 through 2025, see Table 4.5 in Chapter 4 of the RIA.

[176] U.S. Environmental Protection Agency (U.S. EPA). 2020. Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–20/012, 2020.

[177] U.S. Environmental Protection Agency (U.S. EPA). 2019. Integrated Science Assessment (ISA) for Particulate Matter (Final Report, 2019). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–19/188, 2019.

[178] In particular, the 2020 Ozone ISA concludes that the currently available evidence for cardiovascular effects and total mortality is suggestive of, but not sufficient to infer, a causal relationship with short-term (as well as long-term) ozone exposures. As such, EPA is in the process of recalibrating its benefits estimates to quantify only premature mortality from respiratory causes (*i.e.,* non-respiratory causes of premature mortality associated with ozone exposure would no longer be estimated). Similarly, the 2019 PM ISA concludes that the currently available evidence for nervous system effects and cancer is likely to be a causal relationship with long term $PM_{2.5}$ exposure. EPA is in the process of evaluating nervous system effects from long term $PM_{2.5}$ exposure and evaluating the relationship between long term $PM_{2.5}$ exposure and cancer. Furthermore, the ISA references a variety of additional studies for consideration in quantifying the health implications of changes in $PM_{2.5}$ and ozone exposure. EPA is updating the estimates for several other health endpoints to account for this new scientific literature.

TABLE IX.1—ESTIMATED 2021 AND 2025 [a] EGU EMISSIONS REDUCTIONS IN THE 12 STATES OF $NO_X$, $SO_2$, AND $CO_2$ AND MORE AND LESS STRINGENT ALTERNATIVES

[Tons] [b c]

| | Proposal | More stringent alternative | Less stringent alternative |
|---|---|---|---|
| 2021: | | | |
| $NO_X$ (annual) | 17,000 | 17,000 | 2,000 |
| $NO_X$ (ozone season) | 17,000 | 17,000 | 2,000 |
| $SO_2$ (annual) | ..... | ..... | ..... |
| $CO_2$ (annual, thousand metric) | ..... | ..... | ..... |
| 2025: | | | |
| $NO_X$ (annual) | 27,000 | 41,000 | 2,000 |
| $NO_X$ (ozone season) | 21,000 | 35,000 | 2,000 |
| $SO_2$ (annual) | ..... | ..... | ..... |
| $CO_2$ (annual, thousand metric) | 4,000 | 10,000 | 3,000 |

[a] The 2021 emissions reductions estimates are based on IPM projections for 2021 and engineering analysis. For more information, see the Ozone Transport Policy Analysis TSD.
[b] $NO_X$ emissions are reported in English (short) tons; $CO_2$ is reported in metric tons.
[c] In addition to no annual $SO_2$ emissions reductions as shown in the table above, there are no annual direct $PM_{2.5}$ emissions reductions.

EPA analyzed ozone-season $NO_X$ emission reductions and the associated costs to the power sector of implementing the EGU $NO_X$ ozone-season emissions budgets in each of the 12 states using the Integrated Planning Model (IPM) and its underlying data and inputs. The estimates of the changes in the cost of supplying electricity for the regulatory control alternatives are presented in Table IX.2.

TABLE IX.2—NATIONAL COMPLIANCE COST ESTIMATES (Millions of 2016$) FOR THE REGULATORY CONTROL ALTERNATIVES

| | Proposal | More-stringent alternative | Less-stringent alternative |
|---|---|---|---|
| 2021–2025 (Annualized) | 19.4 | 80.6 | 1.6 |
| 2021 (Annual) | 20.9 | 37.2 | 3.8 |
| 2025 (Annual) | 6.3 | 132.2 | −12.0 |

The *2021–2025 (Annualized)* row reflects total estimated annual compliance costs levelized over the period 2021 through 2025, discounted using a 4.25 real discount rate. The *2021 (Annual)* and *2025 (Annual)* rows reflect annual estimates in each of those years.

EPA estimated the climate benefits for this proposed rulemaking using a measure of the domestic social cost of carbon (SC–$CO_2$). Table IX.3 shows the estimated monetary value of the estimated changes in $CO_2$ emissions in 2021 and 2025 for this proposed action, the more stringent alternative, and the less stringent alternative.

TABLE IX.3—ESTIMATED DOMESTIC CLIMATE BENEFITS FROM CHANGES IN $CO_2$ EMISSIONS FOR SELECTED YEARS

[Millions of 2016$]

| Regulatory option | Year | 3% Discount rate | 7% Discount rate |
|---|---|---|---|
| Proposal | 2021 | 0.3 | 0.0 |
| | 2025 | 32.9 | 5.4 |
| More Stringent Alternative | 2021 | 0.8 | 0.1 |
| | 2025 | 71.5 | 11.7 |
| Less Stringent Alternative | 2021 | 0.2 | 0.0 |
| | 2025 | 25.5 | 4.2 |

In Table IX.4, EPA presents a summary of the benefits, costs, and net benefits of this proposed action and the more and less stringent alternatives for 2021. Table IX.5 presents a summary of these impacts for this proposed action and the more and less stringent alternatives for 2025. EPA represents the present annual value of non-monetized benefits from ozone, $PM_{2.5}$ and $NO_2$ reductions as a B. The annual value of B will differ across discount rates, year of analysis, and the regulatory alternatives analyzed. Further discussion of the non-monetized health and welfare benefits from these pollutants is found in Chapter 5 of the RIA.

TABLE IX.4—BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2021 FOR THE U.S.

[Millions of 2016$] [a b c, d]

| Discount rate | Benefits | Costs | Net benefits |
|---|---|---|---|
| Proposal: | | | |
| 3% | 0.31 + B | 21 | −21 + B |
| 7% | 0.05 + B | | −21 + B |
| More Stringent Alternative: | | | |
| 3% | 0.80 + B | 37 | −36 + B |
| 7% | 0.12 +B | | −37 + B |
| Less Stringent Alternative: | | | |
| 3% | 0.17 + B | 4 | −4 + B |
| 7% | 0.03 + B | | −4 + B |

[a] EPA focused results to provide a snapshot of costs and benefits in 2021, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

[b] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in $CO_2$ emissions. The costs presented in this table are 2021 annual estimates for each alternative analyzed.

[c] All costs and benefits are rounded to two significant figures; rows may not appear to add correctly.

[d] B is the sum of all unquantified ozone, $PM_{2.5}$, and $NO_2$ benefits. The annual value of B will differ across discount rates, year of analysis, and the regulatory alternatives analyzed. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs to provide information regarding the potential magnitude of the benefits of this proposed rule.

TABLE IX.5—BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2025 FOR THE U.S.

[Millions of 2016$] [a b c d]

| Discount rate | Benefits | Costs | Net benefits |
|---|---|---|---|
| Proposal: | | | |
| 3% | 33 + B | 6 | 27 + B |
| 7% | 5.4 + B | | −0.9 + B |
| More Stringent Alternative: | | | |
| 3% | 71.5 + B | 132 | −61 + B |
| 7% | 11.7 + B | | −120 + B |
| Less Stringent Alternative: | | | |
| 3% | 25 + B | −12 | 37 + B |
| 7% | 4.2 + B | | 16 + B |

[a] EPA focused results to provide a snapshot of costs and benefits in 2025, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

[b] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in $CO_2$ emissions. The costs presented in this table are 2025 annual estimates for each alternative analyzed.

[c] All costs and benefits are rounded to two significant figures; rows may not appear to add correctly.

[d] B is the sum of all unquantified ozone, $PM_{2.5}$, and $NO_2$ benefits. The annual value of B will differ across discount rates, year of analysis, and the regulatory alternatives analyzed. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs to provide information regarding the potential magnitude of the benefits of this proposed rule.

In addition, Table IX–6 presents estimates of the present value (PV) of the benefits and costs and the equivalent annualized value (EAV), an estimate of the annualized value of the net benefits consistent with the present value, over the five-year period of 2021 to 2025. The estimates of the PV and EAV are calculated using discount rates of 3 and 7 percent as directed by OMB's Circular A–4 and are presented in 2016 dollars discounted to 2021. The table reflects the present value of non-monetized benefits from ozone, $PM_{2.5}$ and $NO_2$ reductions as a β, while b represents the equivalent annualized value of these non-monetized benefits. These values will differ across the discount rates and depend on the B's in Tables IX.4 and IX.5.

TABLE IX.6—ESTIMATED COMPLIANCE COSTS, CLIMATE BENFITS, AND NET BENEFITS OF THE PROPOSED RULE, 2021 THROUGH 2025

[Millions 2016$, discounted to 2021]

| | 3% Discount rate | 7% Discount rate |
|---|---|---|
| Present Value: | | |
| Benefits [c d] | 101 + β | 15 + β |
| Climate Benefits [c] | 101 | 15 |
| Compliance Costs [e] | 87 | 83 |
| Net Benefits | 14 + β | −68 + β |
| Equivalent Annualized Value: | | |
| Benefits | 22 + b | 4 + b |
| Climate Benefits | 22 | 4 |

TABLE IX.6—ESTIMATED COMPLIANCE COSTS, CLIMATE BENFITS, AND NET BENEFITS OF THE PROPOSED RULE, 2021 THROUGH 2025—Continued

[Millions 2016$, discounted to 2021]

| | 3% Discount rate | 7% Discount rate |
|---|---|---|
| Compliance Costs | 19 | 20 |
| Net Benefits | 3 + b | −17+ b |

[a] All estimates in this table are rounded to two significant figures, so numbers may not sum due to independent rounding.
[b] The annualized present value of costs and benefits are calculated over a 5 year period from 2021 to 2025.
[c] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in $CO_2$ emissions.
[d] β and b is the sum of all unquantified ozone, $PM_{2.5}$, and $NO_2$ benefits. The annual values of β and b will differ across discount rates. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs to provide information regarding the potential magnitude of the benefits of this proposed rule.
[e] The costs presented in this table reflect annualized present value compliance costs calculated over a 5 year period from 2021 to 2025.

As shown in Table IX–6, the PV of the climate benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about $15 million, with an EAV of about $4 million. At a 3-percent discount rate, the PV of the climate benefits is estimated to be about $101 million, with an EAV of $22 million. The PV of the compliance costs, discounted at a 7-percent rate, is estimated to be about $83 million, with an EAV of about $20 million. At a 3-percent discount rate, the PV of the estimated compliance costs is about $87 million, with an EAV of about $19 million. The PV of the net benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about −$68 million, with an EAV of about −$17 million. At a 3-percent discount rate, the PV of net benefits is about $14 million, with an EAV of about $3 million. See the RIA for additional discussion on costs, benefits, and impacts.

## X. Summary of Proposed Changes to the Regulatory Text for the Federal Implementation Plans and Trading Programs

This section describes the proposed amendments to the regulatory text for the federal implementation plans and the trading program regulations related to the proposed findings and remedy discussed elsewhere in this document. The primary amendments to the CFR would be revisions to the CSAPR Update FIP provisions in 40 CFR part 52 and the creation of a new CSAPR $NO_X$ Ozone Season Group 3 Trading Program in 40 CFR part 97, subpart GGGGG. In addition, amendments are proposed to the regulations for the existing CSAPR $NO_X$ Ozone Season Group 2 Trading Program to address the transition of the sources in certain states from the existing Group 2 program to the new Group 3 program. The existing regulations for the administrative appeal procedures in 40 CFR part 78 would also be revised to reflect the applicability of those procedures to decisions of the EPA Administrator under the new Group 3 trading program.

In addition to these primary amendments, certain revisions are proposed to the regulations for the existing CSAPR trading programs and the Texas $SO_2$ Trading Program for conformity with the proposed provisions of the new Group 3 trading program, as discussed in section VIII.C.8. This section also describes a small number of minor additional proposed corrections and clarifications to the existing CFR text for the CSAPR trading programs, the Texas $SO_2$ Trading Program, and the appeal procedures. EPA has included documents in the docket for this proposed action showing all of the proposed revisions to part 52, part 78, and subparts AAAAA through FFFFF of part 97 in redline-strikeout format.

### *A. Amended CSAPR Update FIP Provisions*

The CSAPR and the CSAPR Update FIP provisions related to ozone season $NO_X$ emissions are set forth in § 52.38(b) as well as sections of part 52 specific to each covered state. Proposed amendments to § 52.38(b)(1) would expand the overall set of CSAPR trading programs addressing ozone season $NO_X$ emissions to include the new Group 3 trading program in subpart GGGGG of part 97 in addition to the current Group 1 and Group 2 trading programs in subparts BBBBB and EEEEE of part 97, respectively while proposed amendments to § 52.38(b)(2) would identify the states whose sources would be required under the new or amended FIPs to participate in each of the respective trading programs with regard to their emissions occurring in particular years. More specifically, for sources in the states that EPA proposes to find have further good neighbor obligations with respect to the 2008 ozone NAAQS under this rule, new § 52.38(b)(2)(iv) would end the requirement to participate in the Group 2 trading program after the 2020 control period and new § 52.38(b)(2)(v) would establish the requirement to participate in the new Group 3 trading program starting with the 2021 control period.

The changes in FIP requirements set forth in § 52.38(b)(1) and (2) would be replicated in the state-specific CFR sections for each of the Group 3 states.[179] In each such CFR section, the current provision indicating that sources in the state are required to participate in the CSAPR $NO_X$ Ozone Season Group 2 Trading Program would be revised to end that requirement with respect to emissions after 2020 and to restore previously removed language indicating that participation by those sources in the Group 2 trading program was only a partial remedy for the state's underlying good neighbor obligation.[180] A further provision would be added in each section indicating that sources in the state are required to participate in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program with respect to emissions starting in 2021. These added provisions would not contain the partial-remedy language, consistent with EPA's proposed determinations in this rule that participation in the Group 3 trading program by a state's EGUs would constitute a full remedy for each such state's underlying good neighbor obligation. No changes would be made to the CFR sections for the remaining states whose sources currently participate in the Group 2 trading

[179] *See* §§ 52.731(b) (Illinois), 52.789(b) (Indiana), 52.940(b) (Kentucky), 52.984(d) (Louisiana), 52.1084(b) (Maryland), 52.1186(e) (Michigan), 52.1584(e) (New Jersey), 52.1684(b) (New York), 52.1882(b) (Ohio), 52.2040(b) (Pennsylvania), 52.2440(b) (Virginia), and 52.2540(b) (West Virginia).

[180] As discussed elsewhere in this document, EPA is proposing to correct the approval of Kentucky's SIP revision that previously led to removal of the partial-remedy language for that state and instead issue a disapproval. For the remaining states, the partial-remedy language was removed in the CSAPR Close-Out, which has been vacated.

program. For these states, EPA's proposed findings in this action would be consistent with and would therefore affirm the previous removal of language indicating that participation by the states' sources in the Group 2 trading program was only a partial remedy for the states' underlying good neighbor obligations.[181]

As under the CSAPR and the CSAPR Update, states subject to the proposed FIPs under this rule would have several options to revise their SIPs to modify or replace those FIPs while continuing to use the Group 3 trading program as the mechanism for meeting the states' good neighbor obligations. New § 52.38(b)(11), (12), and (13) would establish options to replace allowance allocations for the 2022 control period, to adopt an abbreviated SIP revision for control periods in 2023 or later years, and to adopt a full SIP revision for control periods in later years, respectively. The first two options would modify certain provisions of the trading program as applied to a state's sources but leave the FIP in place, while the third option would replace the FIP with largely identical SIP requirements for sources to participate in a state Group 3 trading program integrated with the federal Group 3 trading program. These options closely replicate the analogous current options in § 52.38(b)(7), (8) and (9) with regard to the Group 2 trading program. To make use of the option to submit state-determined allocations for the 2022 control period, a state would need to notify EPA by 90 days after publication of the final rule of its intent to submit to EPA by 180 days after publication a state-approved spreadsheet setting forth the allocations. To modify or replace the FIP with an abbreviated or full SIP affecting 2023 or 2024 allocations, the state would need to submit a SIP revision by December 1, 2021.

Like the analogous options under the Group 2 trading program, the abbreviated and full SIP options under the Group 3 trading program in new § 52.38(b)(12)(i) and (ii) and (b)(13)(i) and (ii) would include options for a state to expand applicability to include certain non-EGU boilers and combustion turbines or smaller EGUs in the state that were previously subject to the $NO_X$ Budget Trading Program. As discussed in section VIII.F.3 of this document, in conjunction with an expansion to include the non-EGUs, the state would be able to also issue an additional amount of allowances. Revised § 52.38(b)(14)(ii)[182] clarifies that a SIP revision requiring a state's sources—EGUs or non-EGUs—to participate in the Group 3 trading program would satisfy the state's obligations to adopt control measures for such sources under the $NO_X$ SIP Call.

The proposed option discussed in section VIII.D.4 of this preamble for a state whose EGUs currently are required to participate the Group 1 or Group 2 trading program to submit a full SIP revision requiring its sources to instead participate in the Group 3 program is set forth in new § 52.38(b)(10). This option would be generally similar to the full SIP option under new § 52.38(b)(13) for states whose sources are already subject to the Group 3 program under a FIP. To the extent that EPA had already commenced allocations of Group 1 or Group 2 allowances to sources in the state for future control periods, the Group 1 or Group 2 allowances already allocated for those control periods would be converted into Group 3 allowances under revised § 97.526(c)(2) or new § 97.826(c)(2).

The principal consequences of EPA's approval of a full SIP revision under § 52.38(b) would be set forth in § 52.38(14) and (15). Revised § 52.38(b)(14)(i)[183] would provide that—with exceptions indicated in other provisions of § 52.38(b)—full and unconditional approval of a state's full SIP revision under new § 52.38(b)(10) or (13) as correcting the SIP's deficiency that was the basis for a given FIP would cause the automatic withdrawal of the corresponding FIP requirements with regard to the sources in the state (except sources in Indian country with the borders of the state). New § 52.38(b)(15)(i), which addresses the Group 1 and Group 2 trading programs rather than the Group 3 trading program, identifies specific amended provisions of the federal trading Group 1 and Group 2 trading programs that would continue to apply to sources in a state Group 1 or Group 2 trading program implemented under a SIP provision in order to provide programmatic consistency across sources participating in the federal trading program and sources participating in integrated state trading programs. Revised § 52.38(b)(15)(ii),[184] which addresses the Group 3 trading program as well as the Group 1 and Group 2 trading programs, would preserve EPA's ability to complete allowance allocations for any control period where such allocations were already underway when the SIP revision was approved, Provisions indicating these consequences of approval of a full SIP revision would also be added to the state-specific CFR sections.

The transition between the Group 2 trading program and the Group 3 trading program, as well as the transition between the Group 1 trading program and the Group 2 trading program or Group 3 trading program, is addressed in § 52.38(b)(15)(iii), which identifies several allowance-related provisions of the federal trading program regulations that would continue to apply when the sources in a state transition to a different federal trading program (and also would continue to apply under an integrated state trading program). Revised § 52.38(b)(15)(iii)(A)[185] would preserve EPA's authority under § 97.526(c) to carry out conversions of Group 1 allowances to Group 3 allowances in all compliance accounts (as well as all general accounts) following the transition of a state's sources from the Group 1 trading program to the Group 3 trading program or following any SIP revision, adding to the provision's existing coverage with respect to conversions of Group 1 allowances to Group 2 allowances. New § 52.38(b)(15)(iii)(B) would preserve EPA's analogous authority under new § 97.826(c) with respect to conversions of Group 2 allowances to Group 3 allowances in analogous circumstances. New § 52.38(b)(15)(iii)(C) would similarly preserve EPA's authority under new § 97.811(d), concerning the proposed recall of Group 2 allowances allocated to sources in Group 3 states for control periods after 2020, following any SIP revision. For clarity, revisions to the state-specific CFR sections would replicate the provisions of § 52.38(b)(15)(iii) indicating that the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) would continue to apply following the transition of a state's sources from one trading program to another or following approval any SIP revision under § 52.38(b).

New § 52.38(b)(17)(ii) would provide that, after the control period in 2020, EPA would stop administering all Group 2 trading program provisions established under SIP revisions previously approved for Group 2 states whose sources would be required to

[181] *See* §§ 52.54(b) (Alabama), 52.184 (Arkansas), 52.840(b) (Iowa), 52.882(b) (Kansas), 52,1284 (Mississippi), 52.1326(b) (Missouri), 52.1930 (Oklahoma), 52.2283(d) (Texas), and 52.2587(e) (Wisconsin).

[182] Redesignated from § 52.38(b)(10)(ii).

[183] Redesignated from § 52.38(b)(10)(i).

[184] Redesignated from § 52.38(b)(11)(i).

[185] Redesignated from § 52.38(b)(11)(ii).

participate in the Group 3 program starting with the 2021 control period.[186]

Finally, new § 52.38(b)(18) would contain updatable lists of states with approved SIP revisions to modify or replace the FIP requirements for the Group 3 trading program, supplementing the analogous lists at § 52.38(b)(16) and (b)(17)(i)[187] for the Group 1 and Group 2 trading programs.

*B. New CSAPR $NO_X$ Ozone Season Group 3 Trading Program Provisions*

The proposed Group 3 trading program regulations would be promulgated in a new subpart GGGGG of part 97 (40 CFR 97.1001 through 97.1035). Definitions, applicability, standard requirements, and other general provisions would be set forth in §§ 97.1001 through 97.1008. State budgets and allocations of allowances to individual units would be addressed in §§ 97.1010 through 97.1012, and provisions concerning designated representatives would be covered in §§ 97.1013 through 97.1018. Management and use of allowances, including accounts, recordation, transfers, compliance, and banking, would be addressed in §§ 97.1020 through 97.1028. Provisions for monitoring, recordkeeping, and reporting would be set forth in §§ 97.1030 through 97.1035.

In general, the Group 3 trading program provisions would parallel the existing Group 2 trading program regulations in subpart EEEEE of part 97 but would reflect the amounts of the budgets, new unit set-asides, Indian country new unit set-asides, and variability limits established in this proposed rulemaking, all of which would be set forth in new § 97.1010. That same section would also set forth the amounts of the Group 3 budgets, new unit set-asides, and variability limits that Group 1 or Group 2 states could adopt in SIP revisions that would be approvable under new § 52.38(b)(10).

Under § 97.1006(c)(3)(i) and (ii), the obligations to hold one Group 3 allowance for each ton of emissions during the control period and to comply with the Group 3 trading program's assurance provisions would begin with the 2021 control period, four years later than the analogous start dates for the Group 2 trading program. The deadlines for certifying monitoring systems under § 97.1030(b) and for beginning quarterly reporting under § 97.1034(d)(1) similarly would be four years later than the analogous Group 2 trading program deadlines. The allowance recordation deadlines under § 97.1021 would begin generally four years later than the comparable recordation deadlines under the Group 2 trading program but would reach the same schedule by July 1, 2023, which would be the deadline for recordation of allowances for the control period in 2026 under both trading programs. However, under new § 97.1021(m), EPA would not record any allocations of Group 3 allowances to any unit at a source until all deductions of Group 2 allowances previously allocated to the units at the source for control periods after 2020 had been completed in accordance with new § 97.811(d).

Like the analogous Group 2 regulations, the Group 3 regulations would allow a Group 3 allowance that was allocated to any account as a replacement for removed Group 1 or Group 2 allowances to be used for all of the purposes for which any other Group 3 allowance may be used. This would be accomplished by adding references to §§ 97.526(c) and 97.826(c)—the sections under which the conversions would be carried out—to the definitions of ''allocate'' and ''CSAPR $NO_X$ Ozone Season Group 3 allowance'' in § 97.1002 as well as the default order for deducting allowances for compliance purposes under § 97.1024(c)(2).

Any Group 3 allowances allocated based on conversion of Group 1 or Group 2 allowances allocated for future years—specifically, the Group 3 allowances that could be allocated under § 97.526(c)(2) or § 97.826(c)(2) if EPA approved a SIP revision from a Group 1 or Group 2 state requiring sources in the state to participate in the Group 3 trading program—would also be treated like any other Group 3 allowance for purposes of determining shares of responsibility for exceedances under the assurance provisions. New paragraphs (2)(iii) and (iv) of the definition of ''common designated representative's assurance level'' in § 97.1002 would establish this equivalence. However, allocations of Group 3 allowances converted from banked Group 1 or Group 2 allowances would be excluded for purposes of determining such shares of responsibility because such converted allowances would not represent allowances allocated from the current control period's emissions budgets. This exclusion would be addressed in new paragraph (2)(ii) of the definition of ''common designated representative's assurance level'' in § 97.1002.

As is currently allowed under the Group 2 trading program, EPA has proposed that, in order to facilitate $NO_X$ SIP Call compliance, a state would be allowed to expand applicability of the Group 3 trading program to include any sources that previously participated in the $NO_X$ Budget Trading Program, and that the state would be able to issue an amount of allowances beyond the state's Group 3 trading program budget if applicability is expanded to include large non-EGU boilers and turbines. Again, like the Group 2 trading program, EPA has also proposed that the assurance provisions would apply only to emissions from the sources subject to the Group 3 trading program before any such expansion. Accordingly, the assurance provisions in the proposed Group 3 trading program regulations would exclude any additional units and allowances brought into the program through such a SIP revision. Specifically, the definitions of ''base CSAPR $NO_X$ Ozone Season Group 3 unit'' and ''base CSAPR $NO_X$ Ozone Season Group 3 source'' in § 97.1002 would exclude units and sources that would not have been included in the program under § 97.1004, and all provisions related to the Group 3 assurance provisions would reference only such ''base'' units and sources.

Proposed §§ 97.1016, 97.1018, and 97.1020(c)(1) and (5) would reduce the administrative compliance burden for sources in the transition from the Group 2 trading program to the Group 3 trading program by providing that certain one-time or periodic submissions made for purposes of compliance with the Group 1 or Group 2 trading program will be considered valid for purposes of the Group 3 trading program as well. The submissions treated in this manner are a certificate of representation or notice of delegation submitted by a designated representative and an application for a general account or notice of delegation submitted by an authorized account representative.

Finally, in conjunction with promulgation of the new Group 3 trading program, EPA has proposed to amend the administrative appeal provisions in part 78 to make the procedures of that part applicable to determinations of the EPA Administrator under the new Group 3 trading program in the same manner as the procedures are applicable to similar determinations under the other CSAPR trading programs and previous EPA trading programs. These amendments would add provisions for the Group 3 trading program to: The list in § 78.1(a)(1) of CFR sections (and analogous SIP revisions) generally giving rise to determinations subject to the part 78 procedures; the list in

[186] The states with approved SIP revisions that would be affected under this provision are Indiana and New York.

[187] Redesignated from § 52.38(b)(12) and (13).

§ 78.1(b) of certain determinations that are expressly subject to those procedures; the list in § 78.3(a) of the types of persons who may seek review under the procedures; the list in § 78.3(b) of persons who must be served regarding an appeal; the list in § 78.3(c) of the required contents of petitions for review; the list in § 78.3(d) of matters for which a right of review under part 78 is not provided; and the requirements in § 78.4(a)(1) as to who must sign a filing.

*C. Transitional Provisions*

As discussed in section VIII.C.4., EPA has proposed to establish three sets of transitional provisions to address the transition of sources that currently participate in the CSAPR $NO_X$ Ozone Season Group 2 Trading Program but that, starting with the 2021 control period, would instead participate in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

The first set of transitional provisions, which would be implemented at new § 97.811(d), would address the recall of Group 2 allowances previously allocated for control periods after 2020 to Group 3 sources (and other entities in Group 3 states).

The second set of transitional provisions would address the possibility that the effective date for the final action in this rulemaking would fall after May 1, 2021. In order to avoid application of the more stringent emission reduction requirements proposed in this action retroactively before the final rule's effective date, this set of provisions would make supplemental allocations of Group 3 allowances to Group 3 sources in amounts collectively equal to the differences in the respective states' budgets under the Group 2 and Group 3 trading programs for the portion of the 2021 ozone season occurring before that date. The total amounts of supplemental allowances for each state would be determined under new § 97.1010(d). The amount of the allocation to each Group 3 unit would be the incremental amount that each unit would have received if the supplemental allowances had been allocated as part of the respective state's emissions budget for 2021, using the same allocation methodology EPA proposes to apply to compute the allocations to existing units from the emissions budget, as set forth in new § 97.1011(a)(3). In addition, to avoid retroactive application of the more stringent Group 3 assurance levels associated with the more stringent Group 3 budgets before the final rule's effective date, the assurance levels for each Group 3 state for the 2021 control period would be increased by the product of 1.21 times the total amount of the supplemental allocations to the units in that state. The language implementing this provision is included in new § 97.1006(c)(2)(iii). New paragraph (2)(v) of the definition of ''common designated representative's assurance level'' in § 97.1002 includes language that accounts for the allocations of supplemental allowances and the increment to the variability limit when apportioning responsibility for any exceedance of a state's assurance level among the owners and operators of the state's sources.

The third set of transitional provisions would address conversions of Group 2 allowances (and in some instances Group 1 allowances) to Group 3 allowances for use in the new Group 3 program. These provisions would be implemented largely through the addition of new § 97.826(c) to the Group 2 trading program regulations and revisions to the analogous provisions in the Group 1 trading program regulations in 97.526(c). Most notably, the proposed one-time conversion of banked 2017–2020 Group 2 allowances to Group 3 allowances would be implemented through the provisions in new § 97.826(c)(1). These provisions set forth the schedule and mechanics for a default one-time conversion of Group 2 allowances that were allocated for the control periods in 2017 through 2020 and that that remain banked following the completion of deductions for compliance for the 2020 control period. The conversion would be applied to all banked Group 2 allowances that as of the scheduled conversion date are held in any general account and in any compliance account for a source located in a Group 3 state but would not be applied to allowances held in a compliance account for a source located in a Group 2 state. The owner or operator of a source located in a Group 2 state could retain banked Group 2 allowances for future use in the Group 2 trading program simply by keeping the allowances in the source's compliance account as of the conversion date or, alternatively, could elect to have banked Group 2 allowances converted to Group 3 allowances simply by transferring the allowances from the source's compliance account to a general account prior to the conversion date. The conversion factor would be the greater of 1.0000 or the ratio of the total number of banked Group 2 allowances being converted to the sum of the variability limits (adjusted to exclude any portion of the first ozone season before the final rule's effective date) for all states covered by the Group 3 trading program.

The proposed option under which the authorized account representative for a general account could elect to prevent certain Group 2 allowances from being included in the default conversion process would be implemented through the provisions in new § 97.826(c)(1)(iv). Under these provisions, before the scheduled date for converting Group 2 allowances to Group 3 allowances, EPA would establish a temporary holding account that would accept transfers of Group 2 allowances from general accounts. Any Group 2 allowances transferred to the temporary holding account in advance of the scheduled conversion date would not be converted to Group 3 allowances, and after completing the conversion procedures for other Group 2 allowances, EPA would transfer the unconverted Group 2 allowances back to the general accounts from which the transfers into the temporary holding account were made.

The additional conversion provisions in § 97.826(c)(2) and (3) would apply only in instances where a Group 2 state submits and EPA approves a SIP revision requiring sources in the state to participate in the Group 3 trading program. In that case, under § 97.826(c)(2), EPA would replace the allocations of Group 2 allowances to the state's sources already recorded for future control periods with allocations of Group 3 allowances, using a conversion factor determined based on the ratio of the state's emissions budget under the Group 2 trading program to the state's optional emissions budget under the Group 3 trading program. If all Group 2 states were to elect this option, following approval of the SIP submission for the last such state, under § 97.826(c)(3), EPA would convert any remaining banked Group 2 allowances from prior control periods using a conversion factor based on the ratio of the total number of Group 2 allowances being converted to that state's variability limit under the Group 3 program. Allowances would be converted under these provisions regardless of the accounts in which they were held.

Additional provisions of § 97.826(c) would address special circumstances. Under § 97.826(c)(4), if any Group 2 allowances are removed for conversion from the compliance account for a source in a state not covered by the Group 3 program, the owner or operator could identify to EPA a general account to receive the Group 3 allowances. This provision would be necessary in such circumstances because Group 3 allowances could not be recorded in any compliance account other than a compliance account for a source with a unit affected under the Group 3 trading program. If the owner or operator did not identify a general account to receive

the Group 3 allowances within 180 days after the conversion, EPA would be authorized to retire the allowances. (The provisions in new § 97.826(c)(4) would not be used in the transition from the Group 2 trading program to the Group 3 trading program if, as proposed, sources in all existing Group 2 states are either transitioned to the Group 3 trading program or continue to be covered by the Group 2 trading program.)

Under § 97.826(c)(5), EPA would be able to group multiple general accounts under common ownership for purposes of performing conversion computations. Because allowances are only recorded as whole allowances, allowance conversion computations will necessarily be rounded to whole allowances. The purpose of the grouping provision would be to ensure that, given rounding, the total quantities of Group 3 allowances issued would not be unduly affected by how the Group 2 allowances are distributed across multiple general accounts under common ownership, with potentially adverse consequences to achievement of the emission reductions required under the rule.

There is a possibility under the Group 2 trading program that some new Group 2 allowances could be issued after the conversions to Group 3 allowances have already taken place. Under § 97.826(c)(6), EPA may convert these allowances to Group 3 allowances as if they had been issued and recorded before the general conversions.

Owners and operators of Group 3 sources generally would not be able to retain banked Group 2 allowances in the compliance accounts for those sources. However, new § 97.826(c)(7) would authorize the use of Group 3 allowances to satisfy obligations to hold Group 2 allowances that might arise after the conversion date, such as an obligation to hold additional allowances because of excess emissions or for compliance with the assurance provisions. When held for this purpose, a single Group 3 allowance could satisfy the obligation to hold more than one Group 2 allowance, as though the conversion were reversed. (As an alternative to using these provisions, the owners and operators of a Group 3 source could use Group 2 allowances held in a general account.)

Amendments addressing conversions of Group 1 allowances to Group 3 allowances in the event Georgia were to elect to join the Group 3 trading program would be reflected in proposed revisions to § 97.526(c)(2) through (7). The revisions would parallel the new provisions discussed above in § 97.826(c)(2) through (7), and in the case of 97.526(c)(4) would include changes making that provision more similar to new § 97.826(c)(4) in two ways. First, the provision would be simplified by requiring that the account identified to receive any otherwise unclaimed allowances must be a general account. Identification of another compliance account would no longer be allowed, making it possible to eliminate rule provisions distinguishing eligible compliance accounts from ineligible compliance accounts. (Any general account would be eligible.) Second, the provision would be modified to authorize the Administrator to retire any allowances that remain unclaimed 180 days after the conversion in question, or, if later, 90 days after the date of publication of a final rule in this action.

Finally, in § 78.1(b)(14) and (17), determinations of the EPA Administrator under §§ 97.526(c) and 97.826(c) regarding conversions of Group 1 and Group 2 allowances to Group 3 allowances and determinations of the EPA Administrator under § 97.811(d) regarding the recall of Group 2 allowances previously allocated to Group 3 units for control periods after 2020 would be added to the list of determinations expressly subject to the part 78 procedures.

*D. Conforming Revisions, Corrections, and Clarifications To Existing Regulations*

As discussed in section VIII.C.8, EPA has proposed several amendments to the existing CSAPR trading programs and the Texas $SO_2$ Trading Program for conformity with the analogous provisions of the new Group 3 trading program.

The proposal to record allocations to existing units three instead of four years in advance of the control period at issue, starting with allocations for the 2025 control periods, would be implemented in the existing CSAPR trading programs through revisions to §§ 97.421(f), 97.521(f), 97.621(f), 97.721(f), and 97.821(f).

The proposal to switch from a two-round process to a one-round process for allocating allowances from new unit set-asides and Indian country new unit set-asides starting with the 2023 control periods would be implemented in the existing CSAPR trading programs through revisions to §§ 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b) and 97.412, 97.512, 97.612, 97.712, and 97.812. The changes to the deadlines for EPA to record the allocations determined through the proposed one-round process would be implemented through revisions to §§ 97.421(g) through (j), 97.521(g) through (j), 97.621(g) through (j), 97.721(g) through (j), and 97.821(g) through (j). The necessary coordinating revisions to dates included in the definitions of ''allowance transfer deadline'' and ''common designated representative'' would be made in §§ 97.402, 97.502, 97.602, 97.702, and 97.802. The proposed simplifications of the assurance provisions made possible by the changes in the new unit set-aside provisions would be implemented through revisions to §§ 97.425(b), 97.525(b), 97.625(b), 97.725(b), and 97.825(b). The related extensions to the deadlines for states with approved SIP revisions to submit to EPA any state-determined allowance allocations would be implemented through revisions to § 52.38(a)(4) and (5) and (b)(4), (5), (8) and (9) and § 52.39(e), (f), (h), and (i).

As discussed in section VIII.C.8., EPA has proposed to replicate several of the deadline revisions proposed for the existing CSAPR trading programs in the similarly structured Texas $SO_2$ Trading Program in order to minimize unnecessary differences between the programs. These revisions to the Texas $SO_2$ Trading Program regulations would be implemented at § 97.902 (definitions of ''allowance transfer deadline'' and ''common designated representative''), 97.921(b) and (c), and 97.925(b).

The proposed amendments that would authorize EPA to reallocate any incorrectly allocated allowances through the new unit set-aside procedures for a control period after the correction is identified, instead of the new unit set-aside procedures for the control period for which the incorrect allocations were originally made, would be implemented in §§ 97.411(c)(5), 97.511(c)(5), 97.611(c)(5), 97.711(c)(5), and 97.811(c)(5).

The proposed amendments to correct the amounts of allowances in the new unit set-asides to address rounding differences from earlier amendments would be implemented in §§ 97.410, 97.510, 97.610, and 97.710.

New § 52.38(a)(7)(i) and (b)(15)(i) and § 52.39(k)(1) would identify the amended provisions that EPA proposes to implement in the existing state CSAPR trading programs to ensure consistent program implementation across all sources, whether the sources participate in the integrated trading programs under FIPs or approved SIP revisions.

EPA proposes to make additional, non-substantive corrections and clarifications in various provisions of the existing CSAPR trading programs in subparts AAAAA through EEEEE of part 97, the Texas $SO_2$ Trading Program in

subpart FFFFF of part 97, and the appeal procedures in part 78. The corrections and clarifications address minor typographical, wording, and formatting errors or update existing cross-references to reflect the new and redesignated provisions in §§ 52.38 and 52.39. In addition, the proposed corrections and clarifications include the following items:

• *Reorganization of the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'' in §§ 97.402, 97.502, 97.602, 97.702, and 97.802.* The revisions would clarify the definitions by relocating certain language between them, identifying provisions that would no longer apply after the control periods in 2023 because of the proposed revisions to the new unit set-aside allocation procedures, and correcting the omission of certain words in the terms ''simple cycle combustion turbine'' and ''combined cycle combustion turbine''.

• *Addition of a definition of ''CSAPR $NO_X$ Ozone Season Group 3 allowance'' in §§ 97.502 and 97.802 and addition of definitions of ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'' and ''nitrogen oxides'' in §§ 97.402, 97.502, 97.602, 97.702, 97.802, and 97.902.* The new definitions of terms for the Group 3 allowances and trading program are needed for other provisions that reference the Group 3 allowances or trading program, while the definition of nitrogen oxides corrects a current omission. Nitrogen oxides would be defined as ''all oxides of nitrogen except nitrous oxide ($N_2O$), expressed on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$)'', which is consistent both with the definitions used in other EPA programs (*see, e.g.,* 40 CFR 51.50, 51.121(a), and 51.122(a)) and with historical practice in the existing CSAPR programs.

• *Revisions to the descriptions of units and control periods eligible for allocations of allowances from the new unit set-asides and Indian country new unit set-asides in §§ 97.412, 97.512, 97.612, 97.712, and 97.812.* The revisions would not substantively alter which units would receive allocations or the amounts of those allocations. Rather, the revisions would more clearly express the existing requirements of the allocation procedures, under which EPA calculates a given unit's allocations considering only the unit's emissions that occur after its deadline for monitor certification (because any earlier emissions would not have occurred in a ''control period'' for that unit).

• *Revisions to the provisions for identification of specific allowances to be deducted for compliance in §§ 97.424(c), 97.524(c), 97.624(c), 97.724(c), 97.824(c), and 97.924(c).* The revisions would clarify by referencing designated representatives instead of authorized account representatives, consistent with the existing requirement that the authorized account representative for a source's compliance account must be the designated representative for the source.

• *Addition of references in part 78 to the Texas $SO_2$ Trading Program.* The added references would be analogous to the references that would be added to part 78 for the proposed new Group 3 trading program. The applicability of the appeal procedures in part 78 to decisions of the EPA Administrator under the Texas $SO_2$ Trading Program has already been established in the provisions for that trading program at § 97.908, but the addition of references in part 78 would clarify the regulations.

## XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders (''E.O.'') can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This proposed action would be an economically significant regulatory action and was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this proposed action. This analysis, which is contained in the ''Regulatory Impact Analysis for the Proposed Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS'' [EPA–452/R–15–009], is available in the docket and is briefly summarized in Section IX of this preamble.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This proposed action is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

### *C. Paperwork Reduction Act (PRA)*

This proposed action will not impose any new information collection burden under the PRA. This proposed action would relocate certain existing information collection requirements for certain sources from subpart EEEEE of 40 CFR part 97 to a new subpart GGGGG of 40 CFR part 97, but would neither change the inventory of sources subject to information collection requirements nor change any existing information collection requirements for any source. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667.

### *D. Regulatory Flexibility Act (RFA)*

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this proposed action are small businesses, small organizations, and small governmental jurisdictions.

EPA has lessened the impacts for small entities by excluding all units serving generators with capacities equal to or smaller than 25 MWe. This exclusion, in addition to the exemptions for cogeneration units and solid waste incineration units, eliminates the burden of higher costs for a substantial number of small entities located in the 12 states for which EPA is proposing FIPs. Within these states, EPA identified seven potentially affected EGUs that are owned by two entities that met the Small Business Administration's criteria for identifying small entities. Neither of these entities is projected to experience compliance costs that exceed 1 percent of generation revenues in 2021. EPA estimated the total net compliance cost to these two small entities to be approximately $0.04 million (in $2016).

EPA has concluded that there will be no significant economic impact on a substantial number of small entities (No SISNOSE) for this proposed rule. Details of this analysis are presented in the RIA, which is in the public docket.

### *E. Unfunded Mandates Reform Act (UMRA)*

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. Note that we expect the proposal to potentially have an impact on only one category of government-owned entities (municipality-owned entities). This analysis does not examine potential indirect economic impacts associated with the proposal, such as employment effects in industries providing fuel and pollution control equipment, or the potential effects of electricity price

increases on government entities. For more information on the estimated impact on government entities, refer to the RIA, which is in the public docket.

*F. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. If finalized, this proposed action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposed action has tribal implications. However, it would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

This action proposes to implement EGU $NO_X$ ozone season emissions reductions in 12 eastern states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.). However, at this time, none of the existing or planned EGUs affected by this rule are owned by tribes or located in Indian country. This proposed action may have tribal implications if a new affected EGU is built in Indian country. Additionally, tribes have a vested interest in how this proposed rule would affect air quality.

In developing the CSAPR, which was promulgated on July 6, 2011, to address interstate transport of ozone pollution under the 1997 ozone NAAQS, EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing that regulation to allow for meaningful and timely tribal input into its development. A summary of that consultation is provided at 76 FR 48346.

EPA received comments from several tribal commenters regarding the availability of the CSAPR allowance allocations to new units in Indian country. EPA responded to these comments by instituting Indian country new unit set-asides in the final CSAPR. In order to protect tribal sovereignty, these set-asides are managed and distributed by the federal government regardless of whether the CSAPR in the adjoining or surrounding state is implemented through a FIP or SIP. While there are no existing affected EGUs in Indian country covered by this proposal, the Indian country set-asides will ensure that any future new units built in Indian country will be able to obtain the necessary allowances. This proposal maintains the Indian country new unit set-aside and adjusts the amounts of allowances in each set-aside according to the same methodology of the CSAPR rule.

EPA informed tribes of our development of this proposal through a National Tribal Air Association—EPA air policy conference call on June 25, 2020. EPA plans to further consult with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this proposed regulation to solicit meaningful and timely input into its development. EPA will facilitate this consultation before finalizing this proposed rule.

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

This proposed action is not subject to E.O. 13045 because EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in Chapter 5 of the accompanying RIA.

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

This proposal, which is a significant regulatory action under E.O. 12866, is likely to have a significant effect on the supply, distribution, or use of energy. EPA has prepared a Statement of Energy Effects for the proposed regulatory control alternative as follows. The Agency estimates a much less than 1 percent change in retail electricity prices on average across the contiguous U.S. in 2021, and a much less than 1 percent reduction in coal-fired electricity generation in 2021 as a result of this rule. EPA projects that utility power sector delivered natural gas prices will change by less than 1 percent in 2021. For more information on the estimated energy effects, refer to the RIA, which is in the public docket.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This proposed rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

EPA notes that this action proposes to revise the CSAPR Update to reduce interstate ozone transport with respect to the 2008 ozone NAAQS. This rule uses EPA's authority in CAA section 110(a)(2)(d) (42 U.S.C. 7410(a)(2)(d)) to reduce $NO_X$ pollution that significantly contributes to downwind ozone nonattainment or maintenance areas. As a result, the rule will reduce exposures to ozone in the most-contaminated areas (*i.e.,* areas that are not meeting the 2008 ozone NAAQS). In addition, the proposed rule separately identifies both nonattainment areas and maintenance areas. This requirement reduces the likelihood that areas close to the level of the standard will exceed the current health-based standards in the future. EPA proposes to implement these emission reductions using the CSAPR $NO_X$ Ozone Season Group 3 program with assurance provisions.

EPA recognizes that many environmental justice communities have voiced concerns in the past about emission trading and the potential for any emission increases in any location. The CSAPR $NO_X$ Ozone Season Group 3 Trading Program in the proposed action is the result of EPA's application of the 4-step framework to reduce interstate ozone pollution and implement those reductions, similar to the trading programs developed in the CSAPR (CSAPR $NO_X$ Ozone Season Group 1 Trading Program) and modified in the CSAPR Update (CSAPR $NO_X$ Ozone Season Group 2 Trading Program), both of which also resulted from the application of the 4-step framework. EPA believes that this approach used in the CSAPR and in the CSAPR Update mitigated community concerns about emissions trading, and that this proposal, which applies the same 4-step framework and proposes a trading program similar to those used in the CSAPR and the CSAPR Update, will also minimize community concerns. EPA seeks comment from communities on this proposal (Comment C–41).

Ozone pollution from power plants has both local and regional components: Part of the pollution in a given location—even in locations near emission sources—is due to emissions from nearby sources and part is due to emissions that travel hundreds of miles and mix with emissions from other sources.

It is important to note that the section of the Clean Air Act providing authority for this proposed rule, section 110(a)(2)(D) (42 U.S.C. 7410(a)(2)(D)), unlike some other provisions, does not

dictate levels of control for particular facilities. In this proposed action, as in the CSAPR and the CSAPR Update, sources in the trading program may trade allowances with other sources in the same or different states, but any emissions shifting that may occur is constrained by an effective ceiling on emissions in each state (the assurance level). As in the CSAPR and the CSAPR Update, assurance provisions in the proposed rule outline the allowance surrender penalties for failing to meet the assurance level (see section VIII.C.2.); there are additional allowance for failing to hold an adequate number of allowances to cover emissions.

This approach will reduce EGU emissions in each state that significantly contributes to downwind nonattainment or maintenance areas with respect to the 2008 ozone NAAQS, while allowing power companies to adjust generation as needed and ensure that the country's electricity needs will continue to be met. As in the CSAPR and the CSAPR Update, EPA believes that the existence of these assurance provisions in the trading program, including the penalties imposed when triggered, will ensure that emissions from states covered by this proposal will stay below the level of the budget plus variability limit.

In addition, under this proposed rule all sources participating in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program must hold enough allowances to cover their emissions. Therefore, if a source emits more than its allocation in a given year, either another source must have used less than its allocation and be willing to sell some of its excess allowances, or the source itself had emitted less than its allocation in one or more previous years (*i.e.,* banked allowances for future use).

In summary, like the CSAPR and the CSAPR Update, this proposed rule minimizes community concerns about localized hot spots and reduces ambient concentrations of pollution where they are most needed by sensitive and vulnerable populations by: Considering the science of ozone transport to set strict state emissions budgets to reduce significant contributions to ozone nonattainment and maintenance (*i.e.,* the most polluted) areas; implementing air quality-assured trading; requiring any emissions above the level of the allocations to be offset by emission decreases; and imposing strict penalties for sources that contribute to a state's exceedance of its budget plus variability limit. In addition, it is important to note that nothing in this proposed rule allows sources to violate their title V permit or any other federal, state, or local emissions or air quality requirements.

In addition, it is important to note that CAA section 110(a)(2)(D), which addresses transport of criteria pollutants between states, is only one of many provisions of the CAA that provide EPA, states, and local governments with authorities to reduce exposure to ozone in communities. These legal authorities work together to reduce exposure to these pollutants in communities, including for minority, low-income, and tribal populations, and provide substantial health benefits to both the general public and sensitive sub-populations.

EPA has already taken steps to begin informing communities of our development of this proposal through a National Tribal Air Association—EPA air policy conference call on June 25, 2020. EPA plans to further consult with communities early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA will facilitate this engagement before finalizing this proposed rule.

*L. Determinations Under CAA Section 307(b)(1) and (d)*

Section 307(b)(1) of the CAA indicates which federal courts of appeals 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 D.C. 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.'' EPA anticipates that final action related to this proposed rulemaking will be ''nationally applicable'' and of ''nationwide scope and effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action, EPA interprets section 110 of the CAA, a provision which has nationwide applicability, and thus it appears that the final action would be based on a determination of nationwide scope and effect. In addition, the rule would apply to 21 States. Also, the rule would be based on a common core of factual findings and analyses concerning the transport of pollutants from the different states subject to it, as well as the impacts of those pollutants and the impacts of options to address those pollutants, in yet other states. For these reasons, the Administrator proposes to determine that this proposed action is of nationwide scope and effect for purposes of CAA section 307(b)(1). If the Administrator makes this proposed determination final, then pursuant to CAA section 307(b) any petitions for review of any final actions regarding the rulemaking would be filed in the D.C. Circuit within 60 days from the date any final action is published in the **Federal Register**.

In addition, pursuant to sections 307(d)(1)(B) and 307(d)(1)(V) of the CAA, the Administrator determines that all aspects of this proposed action are subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under CAA section 110(c).'' 42 U.S.C. 7407(d)(1)(B). Under CAA section 307(d)(1)(V), the provisions of section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7407(d)(1)(V). The Agency will comply with the procedural requirements of CAA section 307(d) in this rulemaking.

**Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS**

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

*40 CFR Part 78*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

*40 CFR Part 97*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 15, 2020.

**Andrew Wheeler,**

*Administrator.*

For the reasons stated in the preamble, EPA proposes to amend parts 52, 78, and 97 of title 40 of the Code of Federal Regulations as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart A—General Provisions

■ 2. Amend § 52.38 by:
■ a. Revising the paragraph (a) subject heading;
■ b. In paragraph (a)(1), adding a subject heading and removing ''($NO_X$).'' and adding in its place ''($NO_X$), except as otherwise provided in this section.'';
■ c. Adding a subject heading to paragraph (a)(2);
■ d. Adding a subject heading to paragraph (a)(3) introductory text and removing ''Notwithstanding the provisions of paragraph (a)(1) of this section, a State'' and adding in its place ''A State'';
■ e. Revising paragraph (a)(4) introductory text;
■ f. In paragraph (a)(4)(i)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ g. In paragraph (a)(4)(i)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 1 to this paragraph (a)(4)(i)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ h. In paragraph (a)(4)(i)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ i. Adding a subject heading to paragraph (a)(5) introductory text and removing ''Notwithstanding the provisions of paragraph (a)(1) of this section, a State'' and adding in its place ''A State'';
■ j. In paragraph (a)(5)(i)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ k. In paragraph (a)(5)(i)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 2 to this paragraph (a)(5)(i)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ l. In paragraph (a)(5)(i)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ m. In paragraph (a)(5)(v), adding ''and'' after the semicolon at the end of the paragraph;
■ n. Adding a subject heading to paragraph (a)(6) and removing ''Following promulgation'' and adding in its place ''Except as provided in paragraph (a)(7) of this section, following promulgation'';
■ o. Revising paragraph (a)(7);
■ p. Adding a subject heading to paragraph (a)(8) introductory text;
■ q. Revising the paragraph (b) subject heading;
■ r. Revising paragraph (b)(1);
■ s. Adding a subject heading to paragraph (b)(2);
■ t. In paragraph (b)(2)(ii), removing ''2016 only:'' and adding in its place ''2016 only, except as provided in paragraph (b)(15)(iii) of this section:'';
■ u. Revising paragraph (b)(2)(iii);
■ v. Adding paragraphs (b)(2)(iv) and (v);
■ w. Adding a subject heading to paragraph (b)(3) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ x. Revising paragraph (b)(4) introductory text;
■ y. In paragraph (b)(4)(ii)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ z. In paragraph (b)(4)(ii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 3 to this paragraph (b)(4)(ii)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ aa. In paragraph (b)(4)(ii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ bb. Adding a subject heading to paragraph (b)(5) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ cc. In paragraph (b)(5)(ii)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ dd. In paragraph (b)(5)(ii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 4 to this paragraph (b)(5)(ii)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ ee. In paragraph (b)(5)(ii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ ff. In paragraph (b)(5)(vi), adding ''and'' after the semicolon at the end of the paragraph;
■ gg. Adding a subject heading to paragraph (b)(6) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ hh. In paragraph (b)(6)(i), removing ''SIP revision.'' and adding in its place ''SIP revision; and'';
■ ii. Revising paragraph (b)(6)(ii);
■ jj. Adding a subject heading to paragraph (b)(7) introductory text, removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'', and adding ''or (iv)'' after ''(b)(2)(iii)'';
■ kk. Revising paragraphs (b)(8) introductory text and (b)(8)(ii);
■ ll. In paragraph (b)(8)(iii)(A)(*2*), removing the period at the end of the paragraph and adding in its place a semicolon;
■ mm. In paragraph (b)(8)(iii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 5 to this paragraph (b)(8)(iii)(B);'', adding a heading to the table, and revising the table entry for ''2025 and any year thereafter'';
■ nn. In paragraph (b)(8)(iii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ oo. Adding a subject heading to paragraph (b)(9) introductory text, removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'', and adding ''or (iv)'' after ''(b)(2)(iii)'' wherever ''(b)(2)(iii)'' appears;
■ pp. Revising paragraph (b)(9)(ii);
■ qq. In paragraph (b)(9)(iii)(A)(*2*), removing the period at the end of the paragraph and adding in its place a semicolon;
■ rr. In paragraph (b)(9)(iii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 6 to this paragraph (b)(9)(iii)(B);'', adding a heading to the table, and

revising the table entry for ''2025 and any year thereafter'';

■ ss. In paragraph (b)(9)(iii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ tt. In paragraph (b)(9)(vii), adding ''and'' after the semicolon at the end of the paragraph;

■ uu. Revising paragraphs (b)(10) and (11);

■ vv. Redesignating paragraphs (b)(12) and (13) as paragraphs (b)(16) and (17), respectively, and adding new paragraphs (b)(12) through (15), and further redesignating newly redesignated paragraphs (b)(17) introductory text and (b)(17)(i) through (iv) as paragraphs (b)(17)(i) introductory text and (b)(17)(i)(A) through (D), respectively;

■ ww. Adding a subject headings to newly redesignated paragraphs (b)(16) introductory text and (b)(17) introductory text;

■ xx. In newly redesignated paragraph (b)(17)(i)(D), adding ''or (iv)'' after ''(b)(2)(iii)''; and

■ yy. Adding paragraphs (b)(17)(ii) and (b)(18).

The additions and revisions read as follows:

**§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?**

(a) *$NO_X$ annual emissions*—(1) *General requirements.* * * *

(2) *Applicability of CSAPR $NO_X$ Annual Trading Program provisions.* * * *

* * * * *

(3) *State-determined allocations of CSAPR $NO_X$ Annual allowances for 2016.* * * *

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR $NO_X$ Annual Trading Program.* A State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart AAAAA of part 97 of this chapter for purposes of the State's sources, and not substantively replacing any other provisions, as follows:

(i) * * *

(B) * * *

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

| Year of the control period for which CSAPR $NO_X$ Annual allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(5) *Full SIP revisions adopting State CSAPR $NO_X$ Annual Trading Programs.* * * *

(i) * * *

(B) * * *

TABLE 2 TO PARAGRAPH (a)(5)(i)(B)

| Year of the control period for which CSAPR $NO_X$ Annual allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(6) *Withdrawal of CSAPR FIP provisions relating to $NO_X$ annual emissions.* * * *

(7) *Continued applicability of certain federal trading program provisions for $NO_X$ annual emissions.* (i) Notwithstanding the provisions of paragraph (a)(6) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR $NO_X$ Annual Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart AAAAA of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.402 of this chapter;

(B) The provisions in § 97.410(a) of this chapter concerning the amounts of the new unit set-asides;

(C) The provisions in §§ 97.411(b)(1) and 97.412(a) of this chapter concerning the procedures for allocating CSAPR $NO_X$ Annual allowances from new unit set-asides (except where the State allocates or auctions such allowances under an approved SIP revision);

(D) The provisions in § 97.411(c)(5) of this chapter concerning the disposition of incorrectly allocated CSAPR $NO_X$ Annual allowances;

(E) The provisions in § 97.421(f), (g), and (i) of this chapter concerning the deadlines for recordation of CSAPR $NO_X$ Annual allowances allocated in accordance with § 97.411(a) or § 97.412(a) of this chapter or allocated or auctioned under an approved SIP revision and the provisions in paragraphs (a)(4)(i)(B) and (C) and (a)(5)(i)(B) and (C) of this section concerning the deadlines for submission to the Administrator of State-determined allocations or auction results; and

(F) The provisions in § 97.425(b) of this chapter concerning the procedures for administering the assurance provisions.

(ii) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at the time of any approval of a State's SIP revision under this section, the

Administrator has already started recording any allocations of CSAPR $NO_X$ Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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.

(8) *States with approved SIP revisions addressing the CSAPR $NO_X$ Annual Trading Program.* * * *

* * * * *

(b) *$NO_X$ ozone season emissions*—(1) *General requirements.* The CSAPR $NO_X$ Ozone Season Group 1 Trading Program provisions, the CSAPR $NO_X$ Ozone Season Group 2 Trading Program provisions, and the CSAPR $NO_X$ Ozone Season Group 3 Trading Program provisions set forth respectively in subparts BBBBB, EEEEE, and GGGGG of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of $NO_X$ during the ozone season (defined as May 1 through September 30 of a calendar year), except as otherwise provided in this section.

(2) *Applicability of CSAPR $NO_X$ Ozone Season Group 1, Group 2, and Group 3 Trading Program provisions.* * * *

* * * * *

(iii) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 and each subsequent year: Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.

(iv) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017, 2018, 2019, and 2020 only, except as provided in paragraph (b)(15)(iii) of this section: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(v) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2021 and each subsequent year: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(3) *State-determined allocations of CSAPR $NO_X$ Ozone Season Group 1 allowances for 2016.* * * *

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR $NO_X$ Ozone Season Group 1 Trading Program.* A State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart BBBBB of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) * * *

(B) * * *

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

| Year of the control period for which CSAPR $NO_X$ Ozone Season Group 1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(5) *Full SIP revisions adopting State CSAPR $NO_X$ Ozone Season Group 1 Trading Programs.* * * *

* * * * *

(ii) * * *

(B) * * *

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

| Year of the control period for which CSAPR $NO_X$ Ozone Season Group 1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(6) *Full SIP revisions to voluntarily join the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.* * * *

* * * * *

(ii) Following promulgation of an approval by the Administrator of such a SIP revision, the provisions of the SIP revision will apply to sources in the State with regard to emissions occurring in the control period that begins May 1 immediately after promulgation of such approval, or such later control period as may be adopted by the State in its regulations and approved by the Administrator in the SIP revision, and in each subsequent control period, except as provided in paragraph (b)(15) of this section.

(7) *State-determined allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances for 2018.* * * *

* * * * *

(8) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR $NO_X$ Ozone Season Group 2 Trading Program.* A State listed in paragraph (b)(2)(iii) or (iv) of this section may adopt and include in a SIP revision, and the Administrator will

approve, regulations replacing specified provisions of subpart EEEEE of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) The State may adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(8)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter; and

(iii) * * *

(B) * * *

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

| Year of the control period for which CSAPR $NO_X$ Ozone Season Group 2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(9) *Full SIP revisions adopting State CSAPR $NO_X$ Ozone Season Group 2 Trading Programs.* * * *

* * * * *

(ii) May adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(9)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter;

(iii) * * *

(B) * * *

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

| Year of the control period for which CSAPR $NO_X$ Ozone Season Group 2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(10) *Full SIP revisions to voluntarily join the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(i) or (iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section or paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section, as applicable, with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, subject to the following requirements and exceptions:

(i) The provisions of paragraphs (b)(13)(i) through (viii) of this section apply to any such SIP revision; and

(ii) Following promulgation of an approval by the Administrator of such a SIP revision, the provisions of the SIP revision will apply to sources in the State with regard to emissions occurring in the control period that begins May 1 immediately after promulgation of such approval, or such later control period as may be adopted by the State in its regulations and approved by the Administrator in the SIP revision, and in each subsequent control period, except as provided in paragraph (b)(15) of this section.

(11) *State-determined allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances for 2022.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR $NO_X$ Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a) of this chapter with regard to the State and the control period in 2022, a list of CSAPR $NO_X$ Ozone Season Group 3 units and the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2019;

(ii) The total amount of CSAPR $NO_X$ Ozone Season Group 3 allowance allocations on the list must not exceed the amount, under § 97.1010(a) of this chapter for the State and the control period in 2022, of the CSAPR $NO_X$ Ozone Season Group 3 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter;

(v) Provided that:

(A) By [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(11)(i) through (iv) of this section by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(11)(v)(A) of this section by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(12) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR $NO_X$ Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart GGGGG of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(i) The State may adopt, as applicability provisions replacing the provisions in § 97.1004(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) The State may adopt, as applicability provisions replacing the provisions in § 97.1004(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(12)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter; and

(iii) The State may adopt, as CSAPR $NO_X$ Ozone Season Group 3 allowance allocation or auction provisions replacing the provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR $NO_X$ Ozone Season Group 3 allowances and may adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR $NO_X$ Ozone Season Group 3 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010(a) and 97.1021 of this chapter for the State and such control period, of the CSAPR $NO_X$ Ozone Season Group 3 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR $NO_X$ Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(12)(ii) of this section, an additional amount of CSAPR $NO_X$ Ozone Season Group 3 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(12)(ii) of this section, of the $NO_X$ emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(12)(iv) of this section and the corresponding sums of the $NO_X$ emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any $NO_X$ emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121 of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(12)(ii) of this section;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR $NO_X$ Ozone Season Group 3 allowances for any such control period to any CSAPR $NO_X$ Ozone Season Group 3 units covered by § 97.1011(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 7 to this paragraph (b)(12)(iii)(B);

TABLE 7 TO PARAGRAPH (b)(12)(iii)(B)

| Year of the control period for which CSAPR $NO_X$ Ozone Season Group 3 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| 2023 | June 1, 2022. |
| 2024 | June 1, 2022. |
| 2025 | June 1, 2023. |
| 2026 | June 1, 2023. |
| 2027 and any year thereafter | June 1 of the third year before the year of the control period. |

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR $NO_X$ Ozone Season Group 3 allowances for any such control period to any CSAPR $NO_X$ Ozone Season Group 3 units covered by §§ 97.1011(b)(1) and 97.1012(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by April 1 of the year following the year of such control period; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(12)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter, § 97.526(c) of this chapter, or § 97.826(c) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(12)(i), (ii), or (iii) of this section by December

1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(12)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(12)(i), (ii), or (iii) of this section.

(13) *Full SIP revisions adopting State CSAPR $NO_X$ Ozone Season Group 3 Trading Programs.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(v), and (b)(11) and (12) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, except that the SIP revision:

(i) May adopt, as applicability provisions replacing the provisions in § 97.1004(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) May adopt, as applicability provisions replacing the provisions in § 97.1004(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(13)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter;

(iii) May adopt, as CSAPR $NO_X$ Ozone Season Group 3 allowance allocation provisions replacing the provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR $NO_X$ Ozone Season Group 3 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010(a) and 97.1021 of this chapter for the State and such control period, of the CSAPR $NO_X$ Ozone Season Group 3 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR $NO_X$ Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(13)(ii) of this section, an additional amount of CSAPR $NO_X$ Ozone Season Group 3 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(13)(ii) of this section, of the $NO_X$ emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(13)(viii) of this section and the corresponding sums of the $NO_X$ emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any $NO_X$ emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121 of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(13)(ii) of this section;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR $NO_X$ Ozone Season Group 3 allowances for any such control period to any CSAPR $NO_X$ Ozone Season Group 3 units covered by § 97.1011(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 8 to this paragraph (b)(13)(iii)(B);

TABLE 8 TO PARAGRAPH (b)(13)(iii)(B)

| Year of the control period for which CSAPR $NO_X$ Ozone Season Group 3 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| 2023 | June 1, 2022. |
| 2024 | June 1, 2022. |
| 2025 | June 1, 2023. |
| 2026 | June 1, 2023. |
| 2027 and any year thereafter | June 1 of the third year before the year of the control period. |

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR $NO_X$ Ozone Season Group 3 allowances for any such control period to any CSAPR $NO_X$ Ozone Season Group 3 units covered by §§ 97.1011(b)(1) and 97.1012(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by April 1 of the year following the year of such control period; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(13)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter, § 97.526(c) of this chapter, or § 97.826(c) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation or auction provisions adopted under paragraph (b)(13)(iii) of this section;

(v) May substitute the name of the State for the term ''State'' as used in subpart GGGGG of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.1002 through 97.1035 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.1002 through 97.1035 of this chapter and must not include the provisions in §§ 97.1011(b)(2) and (c)(5)(iii), 97.1012(b), and 97.1021(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.1002 (definitions of ''base CSAPR $NO_X$ Ozone Season Group 3 source'', ''base CSAPR $NO_X$ Ozone Season Group 3 unit'', ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.1006(c)(2), and 97.1025 of this chapter and the portions of other provisions of subpart GGGGG of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(13)(i) through (vi) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(13)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(13)(i), (ii), or (iii) of this section.

(14) *Withdrawal of CSAPR FIP provisions relating to $NO_X$ ozone season emissions.* Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section, paragraphs (b)(1), (b)(2)(iii) or (iv), and (b)(7) and (8) of this section, or paragraphs (b)(1), (b)(2)(v), and (b)(11) and (12) of this section for sources in the State—

(i) Except as provided in paragraph (b)(15) of this section, the provisions of paragraph (b)(2)(i), (iii), (iv), or (v) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

(ii) For a State listed in § 51.121(c) of this chapter, the State's adoption of the regulations included in such approved SIP revision will satisfy with regard to the sources subject to such regulations, including any sources made subject to such regulations pursuant to paragraph (b)(9)(ii) or (b)(13)(ii) of this section, the requirement under § 51.121(r)(2) of this chapter for the State to revise its SIP to adopt control measures with regard to such sources, provided that the Administrator and the State continue to carry out their respective functions under such regulations.

(15) *Continued applicability of certain federal trading program provisions for $NO_X$ ozone season emissions.* (i) Notwithstanding the provisions of paragraph (b)(14)(i) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR $NO_X$ Ozone Season Group 1 Trading Program or State CSAPR $NO_X$ Ozone Season Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart BBBBB of part 97 of this chapter, as amended, or subpart EEEEE of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.502 of this chapter or § 97.802 of this chapter;

(B) The provisions in § 97.510(a) of this chapter concerning the amounts of the new unit set-asides;

(C) The provisions in §§ 97.511(b)(1) and 97.512(a) of this chapter or §§ 97.811(b)(1) and 97.812(a) of this chapter concerning the procedures for allocating CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances from new unit set-asides (except where the State allocates or auctions such allowances under an approved SIP revision);

(D) The provisions in § 97.511(c)(5) of this chapter or § 97.811(c)(5) of this chapter concerning the disposition of incorrectly allocated CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances;

(E) The provisions in § 97.521(f), (g), and (i) of this chapter or § 97.821(f), (g), and (i) of this chapter concerning the deadlines for recordation of CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances allocated in accordance with § 97.511(a) or § 97.512(a) of this chapter or § 97.811(a) or § 97.812(a) of this chapter or allocated or auctioned under an approved SIP revision and the provisions in paragraphs (b)(4)(ii)(B) and (C) and (b)(5)(ii)(B) and (C) of this section or paragraphs (b)(8)(iii)(B) and (C) and (b)(9)(iii)(B) and (C) of this section concerning the deadlines for submission to the Administrator of State-determined allocations or auction results; and

(F) The provisions in § 97.525(b) of this chapter or § 97.825(b) of this chapter concerning the procedures for administering the assurance provisions.

(ii) Notwithstanding the provisions of paragraph (b)(6)(ii), (b)(10)(ii), or (b)(14)(i) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 1 allowances under subpart BBBBB of part 97 of this chapter, or allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, or allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter, to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period, including the provisions of §§ 97.526(c) and 97.826(c) of this chapter, shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation of the applicability of other provisions of subpart BBBBB or EEEEE of part 97 of this chapter to the sources in a State pursuant to paragraph

(b)(2)(ii) or (iv) or (b)(14)(i) of this section, the following provisions shall continue to apply with regard to all CSAPR $NO_X$ Ozone Season Group 1 allowances and CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any source or other entity in the State and to all sources or other entities, wherever located, that received or at any time hold such allowances:

(A) The provisions of § 97.526(c)(1) through (6) of this chapter authorizing the Administrator to remove CSAPR $NO_X$ Ozone Season Group 1 allowances from any Allowance Management System account where such CSAPR $NO_X$ Ozone Season Group 1 allowances are held and to allocate and record amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances in place of any CSAPR $NO_X$ Ozone Season Group 1 allowances that have been so removed or that have not been initially recorded, and the provisions of § 97.526(c)(7) of this chapter authorizing the use of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR $NO_X$ Ozone Season Group 1 allowances;

(B) The provisions of § 97.826(c)(1) through (6) of this chapter authorizing the Administrator to remove CSAPR $NO_X$ Ozone Season Group 2 allowances from any Allowance Management System account where such CSAPR $NO_X$ Ozone Season Group 2 allowances are held and to allocate and record amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances in place of any CSAPR $NO_X$ Ozone Season Group 2 allowances that have been so removed or that have not been initially recorded, and the provisions of § 97.826(c)(7) of this chapter authorizing the use of CSAPR $NO_X$ Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR $NO_X$ Ozone Season Group 2 allowances; and

(C) The provisions of § 97.811(d) of this chapter recalling all allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances for control periods after 2020 to sources and other entities in States listed in paragraph (b)(2)(iv) of this section, requiring such sources and other entities to surrender of equal amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for the same control periods to accomplish such recalls, authorizing the Administrator to record the removal of such surrendered CSAPR $NO_X$ Ozone Season Group 2 allowances from any Allowance Management Account, and establishing potential remedies for any failure to comply with such surrender requirements.

(16) *States with approved SIP revisions addressing the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.* * * *

* * * * *

(17) *States with approved SIP revisions addressing the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.* * * *

* * * * *

(ii) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(iv) of this section and any control period that begins after December 31, 2020, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter, except §§ 97.811(d) and 97.826(c) of this chapter, or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section.

(18) *States with approved SIP revisions addressing the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.* The following States have SIP revisions approved by the Administrator under paragraph (b)(10), (11), (12), or (13) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(10) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section or paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(11) of this section as replacing the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation provisions in § 97.1011(a) of this chapter with regard to the State and the control period in 2022: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(12) of this section as replacing the CSAPR $NO_X$ Ozone Season Group 3 applicability provisions in § 97.1004(a) and (b) or § 97.1004(a)(1) and (2) of this chapter or the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year: [none].

(iv) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(13) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(v), and (b)(11) and (12) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

■ 3. Amend § 52.39 by:

■ a. Adding a subject heading to paragraph (a) and removing ''($SO_2$).'' and adding in its place ''($SO_2$), except as otherwise provided in this section.'';

■ b. Adding a subject heading to paragraph (b);

■ c. Adding a subject heading to paragraph (c);

■ d. Adding a subject heading to paragraph (d) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ e. Revising paragraph (e) introductory text;

■ f. In paragraph (e)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ g. In paragraph (e)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 1 to this paragraph (e)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ h. In paragraph (e)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ i. Adding a subject heading to paragraph (f) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ j. In paragraph (f)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ k. In paragraph (f)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 2 to this paragraph (f)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ l. In paragraph (f)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the

control period, for a control period in 2023 or thereafter; and'';

■ m. In paragraph (f)(5), adding ''and'' after the semicolon at the end of the paragraph;

■ n. Adding a subject heading to paragraph (g) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ o. Revising paragraph (h) introductory text;

■ p. In paragraph (h)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ q. In paragraph (h)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 3 to this paragraph (h)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ r. In paragraph (h)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ s. Adding a subject heading to paragraph (i) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ t. In paragraph (i)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ u. In paragraph (i)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 4 to this paragraph (i)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ v. In paragraph (i)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ w. In paragraph (i)(5), adding ''and'' after the semicolon at the end of the paragraph;

■ x. Adding a subject heading to paragraph (j) and removing ''Following promulgation'' and adding in its place ''Except as provided in paragraph (k) of this section, following promulgation'';

■ y. Revising paragraph (k); and

■ z. Adding a subject headings to paragraphs (l) introductory text and (m) introductory text.

The additions and revisions read as follows:

**§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?**

(a) *General requirements for $SO_2$ emissions.* * * *

(b) *Applicability of CSAPR $SO_2$ Group 1 Trading Program provisions.* * * *

(c) *Applicability of CSAPR $SO_2$ Group 2 Trading Program provisions.* * * *

* * * * *

(d) *State-determined allocations of CSAPR $SO_2$ Group 1 allowances for 2016.* * * *

* * * * *

(e) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR $SO_2$ Group 1 Trading Program.* A State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart CCCCC of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(1) * * *

(ii) * * *

TABLE 1 TO PARAGRAPH (e)(1)(ii)

| Year of the control period for which CSAPR $SO_2$ Group 1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(f) *Full SIP revisions adopting State CSAPR $SO_2$ Group 1 Trading Programs.* * * *

(1) * * *

(ii) * * *

TABLE 2 TO PARAGRAPH (f)(1)(ii)

| Year of the control period for which CSAPR $SO_2$ Group 1 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(g) *State-determined allocations of CSAPR $SO_2$ Group 2 allowances for 2016.* * * *

* * * * *

(h) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR $SO_2$ Group 2 Trading Program.* A State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart DDDDD of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(1) * * *

(ii) * * *

TABLE 3 TO PARAGRAPH (h)(1)(ii)

| Year of the control period for which CSAPR $SO_2$ Group 2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(i) *Full SIP revisions adopting State CSAPR $SO_2$ Group 2 Trading Programs.* * * *

(1) * * *

(ii) * * *

TABLE 4 TO PARAGRAPH (i)(1)(ii)

| Year of the control period for which CSAPR $SO_2$ Group 2 allowances are allocated or auctioned | Deadline for submission of allocations or auction results to the Administrator |
|---|---|
| * * * * * * * | |
| 2023 and 2024 | June 1 of the fourth year before the year of the control period. |
| 2025 and any year thereafter | June 1 of the third year before the year of the control period. |

* * * * *

(j) *Withdrawal of CSAPR FIP provisions relating to $SO_2$ emissions.* * * *

(k) *Continued applicability of certain federal trading program provisions for $SO_2$ emissions.* (1) Notwithstanding the provisions of paragraph (j) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR $SO_2$ Group 1 Trading Program or State CSAPR $SO_2$ Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart CCCCC of part 97 of this chapter, as amended, or subpart DDDDD of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(i) The definitions in § 97.602 of this chapter or § 97.702 of this chapter;

(ii) The provisions in § 97.610(a) of this chapter or § 97.710(a) of this chapter concerning the amounts of the new unit set-asides;

(iii) The provisions in §§ 97.611(b)(1) and 97.612(a) of this chapter or §§ 97.711(b)(1) and 97.712(a) of this chapter concerning the procedures for allocating CSAPR $SO_2$ Group 1 allowances or CSAPR $SO_2$ Group 2 allowances from new unit set-asides (except where the State allocates or auctions such allowances under an approved SIP revision);

(iv) The provisions in § 97.611(c)(5) of this chapter or § 97.711(c)(5) of this chapter concerning the disposition of incorrectly allocated CSAPR $SO_2$ Group 1 allowances or CSAPR $SO_2$ Group 2 allowances;

(v) The provisions in § 97.621(f), (g) and (i) of this chapter or § 97.721(f), (g) and (i) of this chapter concerning the deadlines for recordation of CSAPR $SO_2$ Group 1 allowances or CSAPR $SO_2$ Group 2 allowances allocated in accordance with § 97.611(a) or § 97.612(a) of this chapter or § 97.711(a) or § 97.712(a) of this chapter or allocated or auctioned under an approved SIP revision and the provisions in paragraphs (e)(1)(ii) and (iii) and (f)(1)(ii) and (iii) of this section or paragraphs (h)(1)(ii) and (iii) and (i)(1)(ii) and (iii) of this section concerning the deadlines for submission to the Administrator of State-determined allocations or auction results; and

(vi) The provisions in § 97.625(b) of this chapter or § 97.725(b) of this chapter concerning the procedures for administering the assurance provisions.

(2) Notwithstanding the provisions of paragraph (i) of this section, if, at the time of an approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR $SO_2$ Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR $SO_2$ Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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.

(l) *States with approved SIP revisions addressing the CSAPR $SO_2$ Group 1 Trading Program.* * * *

* * * * *

(m) *States with approved SIP revisions addressing the CSAPR $SO_2$ Group 2 Trading Program.* * * *

* * * * *

## Subpart O—Illinois

■ 4. Amend § 52.731 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

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

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was

promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Illinois' SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 P—Indiana

■ 5. Amend § 52.789 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

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

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Indiana's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE of GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 S—Kentucky

■ 6. Amend § 52.940 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

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

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the

extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Kentucky's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 T—Louisiana

■ 7. Amend § 52.984 by revising paragraphs (d)(2) and (3) and adding paragraph (d)(4) to read as follows:

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

* * * * *

(d) * * *

(2) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. 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 Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. 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 Louisiana's SIP.

(3) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. 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 Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, 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 Louisiana's SIP.

(4) Notwithstanding the provisions of paragraphs (d)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Louisiana's SIP revision described in paragraph (d)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 V—Maryland

■ 8. Amend § 52.1084 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

### § 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Maryland's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Maryland's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other

entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Maryland's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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

■ 9. Amend § 52.1186 by revising paragraphs (e)(2) and (3) and adding paragraph (e)(4) to read as follows:

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

* * * * *

(e) * * *

(2) 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 CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. 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 CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. 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.

(3) 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 CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. 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 CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, 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.

(4) Notwithstanding the provisions of paragraphs (e)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Michigan's SIP revision described in paragraph (e)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 FF—New Jersey

■ 10. Amend § 52.1584 by revising paragraphs (e)(2) and (3) and adding paragraph (e)(4) to read as follows:

### § 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(2) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to New Jersey's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to New Jersey's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (e)(2) and (3) of this section the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all

CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of New Jersey's SIP revision described in paragraph (e)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 HH—New York

■ 11. Amend § 52.1684 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

### § 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. 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 New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. 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 New York's SIP.

(3) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. 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 New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, 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 New York's SIP.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of New York's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 KK—Ohio

■ 12. Amend § 52.1882 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

### § 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Ohio's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Ohio's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone

Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Ohio's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 NN—Pennsylvania

■ 13. Amend § 52.2040 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

### § 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Pennsylvania's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Pennsylvania's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Pennsylvania's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 VV—Virginia

■ 14. Amend § 52.2440 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

### § 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Virginia's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 XX—West Virginia

■ 15. Amend § 52.2540 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

**§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to West Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to West Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR $NO_X$ Ozone Season Group 1 allowances or CSAPR $NO_X$ Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of West Virginia's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such 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 78—APPEAL PROCEDURES

■ 16. The authority citation for part 78 is revised to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 17. Amend § 78.1 by:

■ a. In paragraphs (a)(1)(i)(A) and (B), removing the period at the end of the paragraph and adding in its place a semicolon;

■ b. Revising paragraphs (a)(1)(i)(C) and (D);

■ c. Removing paragraph (a)(1)(i)(E) and redesignating paragraph (a)(1)(i)(F) as paragraph (a)(1)(i)(E);

■ d. Revising paragraph (a)(1)(iv);

■ e. In paragraph (b)(1) introductory text, removing the semicolon at the end of the paragraph and adding in its place a comma;

■ f. In paragraph (b)(9)(i), removing ''(c)(2) of'' and adding in its place ''(c)(2) of'';

■ g. In paragraph (b)(13)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.412'';

■ h. In paragraph (b)(13)(iii), removing ''§§ 97.424 and 97.425'' and adding in its place ''§ 97.424 or § 97.425'';

■ i. In paragraph (b)(14)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.512'';

■ j. In paragraph (b)(14)(iii), removing ''§§ 97.524 and 97.525'' and adding in its place ''§ 97.524 or § 97.525'';

■ k. In paragraph (b)(14)(viii), adding ''or CSAPR $NO_X$ Ozone Season Group 3 allowances'' after ''CSAPR $NO_X$ Ozone Season Group 2 allowances'';

■ l. In paragraph (b)(15)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.612'';

■ m. In paragraph (b)(15)(iii), removing ''§§ 97.624 and 97.625'' and adding in its place ''§ 97.624 or § 97.625'';

■ n. In paragraph (b)(16)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.712'';

■ o. In paragraph (b)(16)(iii), removing ''§§ 97.724 and 97.725'' and adding in its place ''§ 97.724 or § 97.725'';

■ p. In paragraph (b)(17)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.812'';

■ q. In paragraph (b)(17)(iii), removing ''§§ 97.824 and 97.825'' and adding in its place ''§ 97.824 or § 97.825'';

■ r. Adding paragraphs (b)(17)(viii) and (ix);

■ s. Redesignating paragraph (b)(18) as paragraph (b)(20) and adding new paragraphs (b)(18) and (19);

■ t. In newly redesignated paragraph (b)(20)(i), removing ''The determination of eligibility for'' and adding in its place ''The decision on eligibility for a''; and

■ u. In newly redesignated paragraph (b)(20)(iii), removing ''and § 98.448(d)'' and adding in its place ''or (d)''.

The revisions and additions read as follows:

**§ 78.1 Purpose and scope.**

(a) * * *

(1) * * *

(i) * * *

(C) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter; subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter; or State regulations approved under § 51.123(o)(1) or (2) or (aa)(1) or (2) or § 51.124(o)(1) or (2) of this chapter;

(D) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter or State regulations approved under § 52.38(a)(4) or (5) or (b)(4), (5), (6), (8), (9), (10), (12), or (13) or § 52.39(e), (f), (h), or (i) of this chapter; or

* * * * *

(iv) All references in paragraph (b) of this section and in § 78.3 to subpart AAAAA of part 97 of this chapter, subpart BBBBB of part 97 of this chapter, subpart CCCCC of part 97 of this chapter, subpart DDDDD of part 97 of this chapter, subpart EEEEE of part 97 of this chapter, and subpart GGGGG of part 97 of this chapter shall be read to include the comparable provisions in State regulations approved under § 52.38(a)(4) or (5) of this chapter, § 52.38(b)(4) or (5) of this chapter, § 52.39(e) or (f) of this chapter, § 52.39(h) or (i) of this chapter, § 52.38(b)(6), (8), or (9) of this chapter, and § 52.38(b)(10), (12), or (13) of this chapter, respectively.

* * * * *

(b) * * *

(17) * * *

(viii) The decision on the removal of CSAPR $NO_X$ Ozone Season Group 2 allowances from an Allowance Management System account and the allocation to such account or another account of CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.826(c) of this chapter.

(ix) The decision on the recall of allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances and the removal of such allowances from an Allowance Management System account under § 97.811(d) of this chapter.

(18) Under subpart FFFFF of part 97 of this chapter,

(i) The decision on the allocation of Texas $SO_2$ Trading Program allowances under § 97.911(a)(2) or (c) or § 97.912 of this chapter.

(ii) The decision on the transfer of Texas $SO_2$ Trading Program allowances under § 97.923 of this chapter.

(iii) The decision on the deduction of Texas $SO_2$ Trading Program allowances under § 97.924 or § 97.925 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.927 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of Texas $SO_2$ Trading Program allowances based on the information as adjusted under § 97.928 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.935 of this chapter.

(19) Under subpart GGGGG of part 97 of this chapter,

(i) The decision on the allocation of CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.1011(a)(2) or (3) or (c) or § 97.1012 of this chapter.

(ii) The decision on the transfer of CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.1023 of this chapter.

(iii) The decision on the deduction of CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.1024 or § 97.1025 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.1027 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of CSAPR $NO_X$ Ozone Season Group 3 allowances based on the information as adjusted under § 97.1028 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.1035 of this chapter.

* * * * *

■ 18. Amend § 78.2 by:

■ a. Revising paragraph (a)(1);

■ b. In paragraphs (a)(2)(ii) and (iii), removing ''Who submitted'' and adding in its place ''Any person who submitted''; and

■ c. In paragraph (b), removing ''subpart'' and adding in its place ''part''.

The revision reads as follows:

**§ 78.2 General.**

(a) * * *

(1) The terms used in this part with regard to a decision of the Administrator that is appealed under this part shall have the meanings as set forth in the regulations under which the Administrator made such decision and as set forth in paragraph (a)(2) of this section and § 72.2 of this chapter.

* * * * *

■ 19. Amend § 78.3 by:

■ a. In paragraph (a)(1) introductory text, adding ''73,'' after ''72,'';

■ b. Revising paragraph (a)(1)(i);

■ c. Removing paragraphs (a)(1)(ii) and (a)(2) and (5) through (9) and redesignating paragraphs (a)(1)(iii) and (a)(3), (4), (10), and (11) as paragraphs (a)(1)(ii) and (a)(2), (3), (4), and (5), respectively;

■ d. In newly redesignated paragraph (a)(2)(i), removing ''the unit'' and adding in its place ''a unit or source covered by the decision'';

■ e. In newly redesignated paragraph (a)(3) introductory text, removing ''AA through II of part 96'' and adding in its place ''AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or AA through II, AAA through III, or AAAA through IIII of part 97'';

■ f. Revising newly redesignated paragraph (a)(3)(i);

■ g. In newly redesignated paragraph (a)(4) introductory text, removing ''or EEEEE'' and adding in its place ''EEEEE, FFFFF, or GGGGG'';

■ h. Revising newly redesignated paragraphs (a)(4)(i) and (a)(5)(i);

■ i. In paragraph (b)(3)(i)(A), removing ''(a)(1), (2), (10), or (11) of this section.'' and adding in its place ''(a)(1) of this section;'';

■ j. In paragraph (b)(3)(i)(B), removing ''(a)(3) of this section.'' and adding in its place ''(a)(2) of this section;'';

■ k. In paragraph (b)(3)(i)(C), removing ''(a)(4), (5), (6), (7), (8), or (9) of this section.'' and adding in its place ''(a)(3) of this section;'';

■ l. Adding paragraphs (b)(3)(i)(D) and (E);

■ m. In paragraph (c)(5)(ii), removing the period at the end of the paragraph and adding in its place a semicolon;

■ n. Revising paragraphs (c)(7)(i) through (v);

■ o. In paragraph (d)(1), removing the period at the end of the paragraph and adding in its place a semicolon;

■ p. In paragraph (d)(2)(i), removing ''the Acid Rain Program or subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter.'' and adding in its place ''parts 72, 73, 74, 75, 76, and 77 of this chapter;'';

■ q. In paragraph (d)(2)(ii), removing ''the $NO_X$ Budget Trading Program.'' and adding in its place ''subparts A through J of part 97 of this chapter;'';

■ r. In paragraph (d)(2)(iii), removing the period at the end of the paragraph and adding in its place a semicolon;

■ s. Adding paragraphs (d)(2)(iv) and (v);

■ t. In paragraphs (d)(3) and (4), removing the period at the end of the paragraph and adding in its place a semicolon;

■ u. Revising paragraphs (d)(5) and (6); and

■ v. Removing paragraph (d)(7) and redesignating paragraph (d)(8) as paragraph (d)(7).

The revisions and additions read as follows:

**§ 78.3 Petition for administrative review and request for evidentiary hearing.**

(a) * * *

(1) * * *

(i) The designated representative for a unit or source covered by the decision or the authorized account representative for any Allowance Tracking System account covered by the decision; or

* * * * *

(3) * * *

(i) The CAIR designated representative for a unit or source covered by the decision or the CAIR authorized account representative for any CAIR $NO_X$ Allowance Tracking System account, CAIR $SO_2$ Allowance Tracking System account, or CAIR $NO_X$ Ozone Season Allowance Tracking System account covered by the decision; or

* * * * *

(4) * * *

(i) The designated representative for a unit or source covered by the decision or the authorized account representative for any Allowance Management System account covered by the decision; or

* * * * *

(5) * * *

(i) The designated representative for a facility covered by the decision; or

* * * * *

(b) * * *

(3) * * *

(i) * * *

(D) The designated representative or authorized account representative, for a petition under paragraph (a)(4) of this section; or

(E) The designated representative, for a petition under paragraph (a)(5) of this section; and

* * * * *

(c) * * *

(7) * * *

(i) Parts 72, 73, 74, 75, 76, and 77 of this chapter;

(ii) Subparts A through J of part 97 of this chapter;

(iii) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter;

(iv) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter; or

(v) Subpart RR of part 98 of this chapter.

(d) * * *

(2) * * *

(iv) A certificate of representation submitted by a designated representative or an application for a general account submitted by an authorized account representative under subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter; or

(v) A certificate of representation submitted by a designated representative under part 98 of this chapter;

* * * * *

(5) Any provision or requirement of subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter, including the standard requirements under § 96.106, § 96.206, or § 96.306 of this chapter or § 97.106, § 97.206, or § 97.306 of this chapter, respectively, and any emission monitoring or reporting requirements;

(6) Any provision or requirement of subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter, including the standard requirements under § 97.406, § 97.506, § 97.606, § 97.706, § 97.806, § 97.906, or § 97.1006 of this chapter, respectively, and any emission monitoring or reporting requirements; or

* * * * *

■ 20. Amend § 78.4 by:

■ a. Revising paragraph (a)(1)(i);

■ b. In paragraph (a)(1)(ii), designating the first sentence as paragraph (a)(1)(ii)(A) and designating the second sentence as paragraph (a)(1)(ii)(B);

■ c. In paragraph (a)(1)(iii), designating the first sentence as paragraph (a)(1)(iii)(A) and designating the second sentence as paragraph (a)(1)(iii)(B); and

■ d. Redesignating paragraph (a)(1)(iv) as paragraph (a)(1)(v) and adding a new paragraph (a)(1)(iv).

The revision and addition read as follows:

**§ 78.4 Filings.**

(a) * * *

(1) * * *

(i)(A) Any filings on behalf of owners and operators of an affected unit or affected source under parts 72, 73, 74, 75, 76, and 77 of this chapter shall be signed by the designated representative.

(B) Any filings on behalf of persons with an ownership interest with respect to allowances in a general account under parts 72, 73, 74, 75, 76, and 77 of this chapter shall be signed by the authorized account representative.

* * * * *

(iv)(A) Any filings on behalf of owners and operators of a CSAPR $NO_X$ Annual unit or CSAPR $NO_X$ Annual source, CSAPR $NO_X$ Ozone Season Group 1 unit or CSAPR $NO_X$ Ozone Season Group 1 source, CSAPR $NO_X$ Ozone Season Group 2 unit or CSAPR $NO_X$ Ozone Season Group 2 source, CSAPR $NO_X$ Ozone Season Group 3 unit or CSAPR $NO_X$ Ozone Season Group 3 source, CSAPR $SO_2$ Group 1 unit or CSAPR $SO_2$ Group 1 source, CSAPR $SO_2$ Group 2 unit or CSAPR $SO_2$ Group 2 source, or Texas $SO_2$ Trading Program unit or Texas $SO_2$ Trading Program source shall be signed by the designated representative.

(B) Any filings on behalf of persons with an ownership interest with respect to CSAPR $NO_X$ Annual allowances, CSAPR $NO_X$ Ozone Season Group 1 allowances, CSAPR $NO_X$ Ozone Season Group 2 allowances, CSAPR $NO_X$ Ozone Season Group 3 allowances, CSAPR $SO_2$ Group 1 allowances, CSAPR $SO_2$ Group 2 allowances, or Texas $SO_2$ Trading Program allowances in a general account shall be signed by the authorized account representative.

* * * * *

**§ 78.5 [Amended]**

■ 21. In § 78.5, amend paragraph (a) by removing from the second sentence ''presented, the issue could not'' and adding in its place ''presented or the issue could not''.

**§ 78.6 [Amended]**

■ 22. Amend § 78.6 by:

■ a. In paragraph (a), removing ''of this part'';

■ b. In paragraph (b)(2) introductory text, removing ''in part, it will:'' and adding in its place ''in part:'';

■ c. In paragraph (b)(2)(i), removing ''Identify the portions'' and adding in its place ''It will identify the portions'', and removing the comma after ''contested''; and

■ d. In paragraph (b)(2)(ii), removing ''Refer the disputed'' and adding in its place ''It will refer the disputed''.

**§ 78.10 [Amended]**

■ 23. Amend § 78.10 by:

■ a. In paragraph (a)(3), removing ''this paragraph'' and adding in its place ''paragraph (a)(1) or (2) of this section'';

■ b. In paragraph (b), adding a comma after ''knowingly caused to be made''; and

■ c. In paragraph (c), removing ''under § 78.9 of this part. This prohibition terminates'' and adding in its place ''under § 78.9. These prohibitions terminate''.

**§ 78.11 [Amended]**

■ 24. Amend § 78.11 by:

■ a. In paragraph (a), removing ''of this part'' wherever it appears; and

■ b. In paragraph (b) introductory text, removing ''of'' and adding in its place ''or''.

**§ 78.12 [Amended]**

■ 25. Amend § 78.12 by:

■ a. In paragraph (a)(1), removing ''warrants review.'' and adding in its place ''warrants review; and''; and

■ b. In paragraph (a)(2), adding a comma after ''Acid Rain permit''.

**§ 78.13 [Amended]**

■ 26. In § 78.13, amend paragraph (a)(3) by removing ''of this part''.

**§ 78.14 [Amended]**

■ 27. In § 78.14, amend paragraphs (a)(4) and (7) and (c)(4) by removing ''of this part''.

**§ 78.15 [Amended]**

■ 28. Amend § 78.15 by:

■ a. In paragraph (a), removing ''of this part'' wherever it appears; and

■ b. In paragraph (e), removing ''of this part''.

**§ 78.16 [Amended]**

■ 29. In § 78.16, amend paragraph (b) introductory text by removing the period at the end of the second sentence and adding in its place a colon.

**§ 78.17 [Amended]**

■ 30. Amend § 78.17 by removing ''of this part''.

**§ 78.18 [Amended]**

■ 31. In § 78.18, amend paragraphs (a) and (b)(1) and (2) by removing ''of this part''.

**§ 78.19 [Amended]**

■ 32. Amend § 78.19 by:

■ a. In paragraph (d), adding ''the'' in the second sentence before ''Environmental Appeals Board''; and
■ b. In paragraph (e), removing ''of this part''.

**§ 78.20 [Amended]**

■ 33. Amend § 78.20 by:
■ a. In paragraph (a)(2), removing ''§ 78.12(a) (1) and (2) of this part.'' and adding in its place ''§ 78.12(a)(1) and (2).''; and
■ b. In paragraph (c), removing ''of this part''.

## PART 97—FEDERAL $NO_X$ BUDGET TRADING PROGRAM, CAIR $NO_X$ AND $SO_2$ TRADING PROGRAMS, CSAPR $NO_X$ AND $SO_2$ TRADING PROGRAMS, AND TEXAS $SO_2$ TRADING PROGRAM

■ 34. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

### Subpart AAAAA—CSAPR $NO_X$ Annual Trading Program

■ 35. Amend § 97.402 by:
■ a. Revising the definition of ''allowance transfer deadline'';
■ b. In the definition of ''alternate designated representative'', adding ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'' before ''CSAPR $SO_2$ Group 1 Trading Program,'';
■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';
■ d. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';
■ e. In the definition of ''CSAPR $NO_X$ Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';
■ f. In the definition of ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';
■ g. Adding in alphabetical order a definition for ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'';
■ h. In the definition of ''designated representative'', adding ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'' before ''CSAPR $SO_2$ Group 1 Trading Program,'';
■ i. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.404(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.404(b)(2)(i)(B) and (b)(2)(ii)''; and
■ j. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revisions and additions read as follows:

**§ 97.402 Definitions.**

* * * * *

*Allowance transfer deadline* means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Annual allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Annual source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Annual emissions limitation for such control period in accordance with §§ 97.406 and 97.424.

* * * * *

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.406(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Annual allowances allocated for such control period to a group of one or more CSAPR $NO_X$ Annual units located in the State (and Indian country within the borders of such State) and having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Annual allowances purchased by an owner or operator of such CSAPR $NO_X$ Annual units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $NO_X$ Annual units in accordance with the CSAPR $NO_X$ Annual allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, multiplied by the sum of the State $NO_X$ Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b) for such control period and divided by such State $NO_X$ Annual trading budget;

(2) Provided that, for a control period in a year before 2023 only, in the case of a unit that operates during, but has no amount of CSAPR $NO_X$ Annual allowances allocated under §§ 97.411 and 97.412 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR $NO_X$ Annual allowances for such control period equal to the unit's allowable $NO_X$ emission rate applicable to such control period, multiplied by a capacity factor of 0.85 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.24 (if the unit is a simple cycle combustion turbine during such control period), 0.67 (if the unit is a combined cycle combustion turbine during such control period), 0.74 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.36 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 8,760 hours/control period, and divided by 2,000 lb/ton.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all CSAPR $NO_X$ Annual units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more CSAPR $NO_X$ Annual units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

* * * * *

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

* * * * *

**§ 97.404 [Amended]**

■ 36. In § 97.404, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

**§ 97.405 [Amended]**

■ 37. In § 97.405, amend paragraph (b) by removing the subject heading.

**§ 97.406 [Amended]**

■ 38. In § 97.406, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

**§ 97.410 [Amended]**

■ 39. Amend § 97.410 by:
■ a. In paragraph (a)(1)(v), removing ''1,439'' and adding in its place ''1,441'';
■ b. In paragraph (a)(2)(v), removing ''1,075'' and adding in its place ''1,074'';
■ c. In paragraph (a)(3)(v), removing ''3,830'' and adding in its place ''3,831'';
■ d. In paragraph (a)(4)(v), removing ''3,253'' and adding in its place ''3,256'';
■ e. In paragraph (a)(5)(v), removing ''712'' and adding in its place ''715'';
■ f. In paragraph (a)(8)(v), removing ''331'' and adding in its place ''333'';
■ g. In paragraph (a)(9)(v), removing ''1,198'' and adding in its place ''1,201'';
■ h. In paragraph (a)(10)(v), removing ''561'' and adding in its place ''565'';
■ i. In paragraph (a)(11)(v), removing ''2,925'' and adding in its place ''2,929'';
■ j. In paragraph (a)(12)(v), removing ''1,772'' and adding in its place ''1,771'';
■ k. In paragraph (a)(13)(v), removing ''159'' and adding in its place ''155'';
■ l. In paragraph (a)(14)(v), removing ''412'' and adding in its place ''410'';
■ m. In paragraph (a)(17)(v), removing ''2,384'' and adding in its place ''2,383'';
■ n. In paragraph (a)(18)(v), removing ''617'' and adding in its place ''620'';
■ o. In paragraph (a)(19)(v), removing ''387'' and adding in its place ''381'';
■ p. In paragraph (a)(21)(v), removing ''1,662'' and adding in its place ''1,663''; and
■ q. In paragraph (a)(22)(v), removing ''2,729'' and adding in its place ''2,730''.
■ 40. Amend § 97.411 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.412(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';
■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';
■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';
■ h. Adding paragraph (b)(2)(i)(B);
■ i. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.412(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';
■ j. Revising paragraph (b)(2)(ii)(B);
■ k. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';
■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';
■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

**§ 97.411 Timing requirements for CSAPR $NO_X$ Annual allowance allocations.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in a State, in accordance with § 97.412(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in Indian country within the borders of a State, in accordance with § 97.412(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 41. Amend § 97.412 by:

■ a. Adding a subject heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.411(a)(1);'' and adding in its place ''§ 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraphs (a)(3)(ii) and (iv);
■ f. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.'';
■ g. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ h. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ i. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ j. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ k. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ l. Adding paragraph (a)(11)(ii);
■ m. Revising paragraph (a)(12);
■ n. Adding a subject heading to paragraph (b) introductory text;
■ o. In paragraph (b)(1)(i), removing ''§ 97.411(a)(1); or'' and adding in its place ''§ 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period; or'';
■ p. Revising paragraph (b)(3)(ii);
■ q. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.'';
■ r. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ s. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ t. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ u. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ v. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ w. Adding paragraph (b)(11)(ii); and
■ x. Revising paragraph (b)(12).

The additions and revisions read as follows:

**§ 97.412 CSAPR $NO_X$ Annual allowance allocations to new units.**

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Annual unit's monitoring systems under § 97.430(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Annual units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Annual unit's monitoring systems under § 97.430(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or

paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Annual units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§ 97.420 [Amended]**

■ 42. In § 97.420, amend paragraph (c)(3)(iii)(B) by removing ''to $NO_X$'' and adding in its place ''to CSAPR $NO_X$''.

■ 43. Amend § 97.421 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2023,''.

The additions read as follows:

**§ 97.421 Recordation of CSAPR $NO_X$ Annual allowance allocations and auction results.**

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.412(a)(2) through (12), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.412(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 44. Amend § 97.424 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

**§ 97.424 Compliance with CSAPR $NO_X$ Annual emissions limitation.**

* * * * *

(c) *Selection of CSAPR $NO_X$ Annual allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Annual allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Annual source and the appropriate serial numbers.

* * * * *

■ 45. Amend § 97.425 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

**§ 97.425 Compliance with CSAPR $NO_X$ Annual assurance provisions.**

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the $NO_X$ emissions from each CSAPR $NO_X$ Annual source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR $NO_X$ Annual sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Annual allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.406(c)(2)(i). For a control period before 2023, if the

results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.406(c)(2)(iii), §§ 97.406(b) and 97.430 through 97.435, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.402, and the calculation formula in § 97.406(c)(2)(i).

* * * * *

**§ 97.431 [Amended]**

■ 46. In § 97.431, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

**§ 97.434 [Amended]**

■ 47. In § 97.434, amend paragraph (d)(3) by adding ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'' before ''CSAPR $SO_2$ Group 1 Trading Program,''.

## Subpart BBBBB—CSAPR $NO_X$ Ozone Season Group 1 Trading Program

■ 48. Amend § 97.502 by:

■ a. Revising the definition of ''allowance transfer deadline'';

■ b. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';

■ c. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';

■ d. In the definition of ''CSAPR $NO_X$ Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'''';

■ e. In the definition of ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15) and (17)'';

■ f. Adding in alphabetical order definitions for ''CSAPR $NO_X$ Ozone Season Group 3 allowance'' and ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'';

■ g. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.504(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.504(b)(2)(i)(B) and (b)(2)(ii)'';

■ h. Adding in alphabetical order a definition for ''nitrogen oxides''; and

■ i. In the definition of ''State'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)''.

The revisions and additions read as follows:

**§ 97.502 Definitions.**

* * * * *

*Allowance transfer deadline* means, for a control period in 2015 or 2016, midnight of December 1 immediately after such control period or, for a control period in a year from 2017 through 2022, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such December 1, March 1, or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 1 emissions limitation for such control period in accordance with §§ 97.506 and 97.524.

* * * * *

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.506(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated for such control period to a group of one or more CSAPR $NO_X$ Ozone Season Group 1 units located in the State (and Indian country within the borders of such State) and having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances purchased by an owner or operator of such CSAPR $NO_X$ Ozone Season Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $NO_X$ Ozone Season Group 1 units in accordance with the CSAPR $NO_X$ Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, multiplied by the sum of the State $NO_X$ Ozone Season Group 1 trading budget under § 97.510(a) and the State's variability limit under § 97.510(b) for such control period and divided by such State $NO_X$ Ozone Season Group 1 trading budget;

(2) Provided that, for a control period before 2023 only, in the case of a unit that operates during, but has no amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under §§ 97.511 and 97.512 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period equal to the unit's allowable $NO_X$ emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple cycle combustion turbine during such control period), 0.71 (if the unit is a combined cycle combustion turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units in such State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more CSAPR $NO_X$ Ozone Season Group 1

units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

*CSAPR $NO_X$ Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(c), or § 97.826(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

* * * * *

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

* * * * *

**§ 97.504 [Amended]**

■ 49. In § 97.504, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

**§ 97.505 [Amended]**

■ 50. In § 97.505, amend paragraph (b) by removing the subject heading.

**§ 97.506 [Amended]**

■ 51. In § 97.506, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

**§ 97.510 [Amended]**

■ 52. In § 97.510, amend paragraph (a)(4)(v) by removing ''481'' and adding in its place ''485''.

■ 53. Amend § 97.511 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.512(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii)(B), removing ''2017 or any subsequent year'' and adding in its place ''a year from 2017 through 2022'';

■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ h. Adding paragraph (b)(2)(i)(B);

■ i. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.512(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ j. Revising paragraph (b)(2)(ii)(B);

■ k. In paragraph (b)(2)(iii)(B), removing ''2017 or any subsequent year'' and adding in its place ''a year from 2017 through 2022'';

■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and

■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

**§ 97.511 Timing requirements for CSAPR $NO_X$ Ozone Season Group 1 allowance allocations.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in a State, in accordance with § 97.512(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in a State, in accordance with § 97.512(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required

in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 54. Amend § 97.512 by:

■ a. Adding a subject heading to paragraph (a) introductory text;

■ b. In paragraph (a)(1)(i), removing ''§ 97.511(a)(1);'' and adding in its place ''§ 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraphs (a)(3)(ii) and (iv);

■ f. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.'';

■ g. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ h. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ i. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ j. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ k. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ l. Adding paragraph (a)(11)(ii);

■ m. Revising paragraph (a)(12);

■ n. Adding a subject heading to paragraph (b) introductory text;

■ o. In paragraph (b)(1)(i), removing ''§ 97.511(a)(1); or'' and adding in its place ''§ 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period; or'';

■ p. Revising paragraph (b)(3)(ii);

■ q. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.'';

■ r. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';

■ s. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ t. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ u. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ v. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ w. Adding paragraph (b)(11)(ii); and

■ x. Revising paragraph (b)(12).

The additions and revisions read as follows:

**§ 97.512 CSAPR $NO_X$ Ozone Season Group 1 allowance allocations to new units.**

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period before 2023, or the control period containing such deadline, for

allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§ 97.520 [Amended]**

■ 55. In § 97.520, amend paragraph (c)(3)(iii)(B) by removing ''to $NO_X$'' and adding in its place ''to CSAPR $NO_X$''.

■ 56. Amend § 97.521 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i)(2) and (j)(2), removing ''By February 15, 2018 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2018 through 2023,''.

The additions read as follows:

**§ 97.521 Recordation of CSAPR $NO_X$ Ozone Season Group 1 allowance allocations and auction results.**

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.512(a)(2) through (12), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 57. Amend § 97.524 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

**§ 97.524 Compliance with CSAPR $NO_X$ Ozone Season Group 1 emissions limitation.**

* * * * *

(c) *Selection of CSAPR $NO_X$ Ozone Season Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Ozone Season Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Ozone Season Group 1 source and the appropriate serial numbers.

* * * * *

■ 58. Amend § 97.525 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

**§ 97.525 Compliance with CSAPR $NO_X$ Ozone Season Group 1 assurance provisions.**

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone

Season Group 1 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the $NO_X$ emissions from each CSAPR $NO_X$ Ozone Season Group 1 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR $NO_X$ Ozone Season Group 1 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Ozone Season Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.506(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.506(c)(2)(iii), §§ 97.506(b) and 97.530 through 97.535, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.502, and the calculation formula in § 97.506(c)(2)(i).

* * * * *

■ 59. Amend § 97.526 by:

■ a. Revising the section heading;

■ b. Removing the paragraph (c) subject heading;

■ c. Revising paragraphs (c) introductory text, (c)(2) introductory text, (c)(2)(ii) and (iii), (c)(3) introductory text, (c)(3)(ii) and (iii), and (c)(4);

■ d. In paragraphs (c)(5)(i) and (ii), adding ''or CSAPR $NO_X$ Ozone Season Group 3 allowances'' after ''CSAPR $NO_X$ Ozone Season Group 2 allowances'';

■ e. In paragraph (c)(5)(iii), adding ''or CSAPR $NO_X$ Ozone Season Group 3 allowances'' after ''CSAPR $NO_X$ Ozone Season Group 2 allowances'' wherever it appears;

■ f. In paragraph (c)(6), adding ''or CSAPR $NO_X$ Ozone Season Group 3 allowances, as applicable,'' after ''CSAPR $NO_X$ Ozone Season Group 2 allowances'';

■ g. Revising paragraph (c)(7) introductory text;

■ h. In paragraph (c)(7)(i), adding ''or (iv)'' after ''§ 52.38(b)(2)(iii)''; and

■ i. Revising paragraph (c)(7)(ii).

The revisions read as follows:

**§ 97.526 Banking and conversion.**

* * * * *

(c) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the Administrator will remove CSAPR $NO_X$ Ozone Season Group 1 allowances from compliance accounts and general accounts and allocate in their place amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances as provided in paragraphs (c)(1) through (5) of this section and will record CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances in lieu of initially recording CSAPR $NO_X$ Ozone Season Group 1 allowances as provided in paragraph (c)(6) of this section.

* * * * *

(2) As soon as practicable after approval of a SIP revision under § 52.38(b)(6) or (10) of this chapter for a State listed in § 52.38(b)(2)(i) of this chapter, but not later than the allowance transfer deadline defined under § 97.802 or § 97.1002 for the initial control period described with regard to such SIP revision in § 52.38(b)(6)(ii)(A) of this chapter or § 52.38(b)(10)(ii)(A) of this chapter, as applicable, the Administrator will temporarily suspend acceptance of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account, unless otherwise provided in such approval of the SIP revision:

* * * * *

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the $NO_X$ Ozone Season Group 1 trading budget set forth for such State in § 97.510(a) divided by the $NO_X$ Ozone Season Group 2 trading budget set forth for such State in § 97.810(a), in the case of a SIP revision under § 52.38(b)(6) of this chapter, or divided by the $NO_X$ Ozone Season Group 3 trading budget set forth for such State in § 97.1010(a), in the case of a SIP revision under § 52.38(b)(10) of this chapter.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances, in the case of a SIP revision under § 52.38(b)(6) of this chapter, or CSAPR $NO_X$ Ozone Season Group 3 allowances, in the case of a SIP revision under § 52.38(b)(10) of this chapter, for each control period for which CSAPR $NO_X$ Ozone Season Group 1 allowances were removed from such account, where each such amount is determined as the quotient of the number of CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period removed from such account under paragraph (c)(2)(i) of this section divided by the conversion factor determined under paragraph (c)(2)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(3) As soon as practicable after approval of a SIP revision under § 52.38(b)(6) or (10) of this chapter for a State listed in § 52.38(b)(2)(i) of this chapter, but not before the completion of deductions under § 97.524 for the control period before the initial control period described with regard to such SIP revision in § 52.38(b)(6)(ii)(A) of this chapter or § 52.38(b)(10)(ii)(A) of this chapter, as applicable, and not later than the allowance transfer deadline defined under § 97.802 or § 97.1002 for such initial control period, the Administrator will temporarily suspend acceptance of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every compliance account for a CSAPR $NO_X$ Ozone Season Group 1

source located in such State, provided that if the provisions of § 52.38(b)(2)(i) of this chapter or a SIP revision approved under § 52.38(b)(5) of this chapter will no longer apply to any source in any State or Indian country within the borders of any State with regard to emissions occurring in such initial control period or any subsequent control period, the Administrator instead will permanently end acceptance of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers submitted under § 97.522 and will take the following actions with regard to every general account and every compliance account:

* * * * *

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR $NO_X$ Ozone Season Group 1 allowances removed from all such accounts under paragraph (c)(3)(i) of this section divided by the product of 1.5 times the variability limit for such initial control period set forth for such State in § 97.810(b), in the case of a SIP revision under § 52.38(b)(6) of this chapter, or divided by the variability limit for such initial control period set forth for such State in § 97.1010(b), in the case of a SIP revision under § 52.38(b)(10) of this chapter.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances, in the case of a SIP revision under § 52.38(b)(6) of this chapter, or CSAPR $NO_X$ Ozone Season Group 3 allowances, in the case of a SIP revision under § 52.38(b)(10) of this chapter, for such initial control period, where such amount is determined as the quotient of the number of CSAPR $NO_X$ Ozone Season Group 1 allowances removed from such account under paragraph (c)(3)(i) of this section divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(4)(i) Where, pursuant to paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator removes CSAPR $NO_X$ Ozone Season Group 1 allowances from the compliance account for a source located in a State that is not listed in § 52.38(b)(2)(iii) or (v) of this chapter and for which no SIP revision has been approved under § 52.38(b)(6) or (10) of this chapter or Indian country within the borders of such a State, the Administrator will not record CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances in that compliance account but instead will allocate to and record in a general account CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances, as applicable, for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, provided that the designated representative for such source identifies such general account in a submission to the Administrator by the later of [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or 180 days after the date on which the Administrator removes CSAPR $NO_X$ Ozone Season Group 1 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section.

(ii) If the designated representative for a source described in paragraph (c)(4)(i) of this section does not make a submission identifying a general account for recordation of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances, as applicable, by the later of [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or 180 days after the date on which the Administrator removes CSAPR $NO_X$ Ozone Season Group 1 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator will transfer the CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances to a surrender account. A submission by the designated representative under paragraph (c)(4)(i) of this section after such a transfer has taken place shall have no effect.

* * * * *

(7) Notwithstanding any other provision of this subpart or subpart EEEEE or GGGGG of this part, CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR $NO_X$ Ozone Season Group 1 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

* * * * *

(ii) After the Administrator has carried out the procedures set forth in paragraph (c)(3) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 unit in a State listed in § 52.38(b)(2)(i) of this chapter may satisfy a requirement to hold a given number of CSAPR $NO_X$ Ozone Season Group 1 allowances for a control period before the initial control period described with regard to the State's SIP revision in § 52.38(b)(6)(ii)(A) or (b)(10)(ii)(A) of this chapter by holding instead, in a general account established for this sole purpose, an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances, as applicable, for such initial control period or any previous control period, where such amount of CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances is computed as the quotient of such given number of CSAPR $NO_X$ Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance.

**§ 97.531 [Amended]**

■ 60. In § 97.531, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

## Subpart CCCCC—CSAPR $SO_2$ Group 1 Trading Program

■ 61. Amend § 97.602 by:

■ a. Revising the definition of ''allowance transfer deadline'';

■ b. In the definition of ''alternate designated representative'', removing ''or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'';

■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';

■ d. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';

■ e. In the definition of ''CSAPR $NO_X$ Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';

■ f. In the definition of ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii),

(b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';

■ g. Adding in alphabetical order a definition for ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'';

■ h. In the definition of ''designated representative'', removing ''or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'';

■ i. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.604(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.604(b)(2)(i)(B) and (b)(2)(ii)''; and

■ j. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revisions and additions read as follows:

**§ 97.602 Definitions.**

* * * * *

*Allowance transfer deadline* means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $SO_2$ Group 1 allowance transfer must be submitted for recordation in a CSAPR $SO_2$ Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR $SO_2$ Group 1 emissions limitation for such control period in accordance with §§ 97.606 and 97.624.

* * * * *

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.606(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $SO_2$ Group 1 allowances allocated for such control period to the group of one or more CSAPR $SO_2$ Group 1 units located in such State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR $SO_2$ Group 1 allowances purchased by an owner or operator of such CSAPR $SO_2$ Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $SO_2$ Group 1 units in accordance with the CSAPR $SO_2$ Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(e) or (f) of this chapter, multiplied by the sum of the State $SO_2$ Group 1 trading budget under § 97.610(a) and the State's variability limit under § 97.610(b) for such control period and divided by such State $SO_2$ Group 1 trading budget;

(2) Provided that, in the case of a unit that operates during, but has no amount of CSAPR $SO_2$ Group 1 allowances allocated under §§ 97.611 and 97.612 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR $SO_2$ Group 1 allowances for such control period equal to the unit's allowable $SO_2$ emission rate applicable to such control period, multiplied by a capacity factor of 0.85 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.24 (if the unit is a simple cycle combustion turbine during such control period), 0.67 (if the unit is a combined cycle combustion turbine during such control period), 0.74 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.36 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 8,760 hours/control period, and divided by 2,000 lb/ton.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $SO_2$ emissions during such control period from the group of one or more CSAPR $SO_2$ Group 1 units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

* * * * *

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

* * * * *

**§ 97.604 [Amended]**

■ 62. In § 97.604, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

**§ 97.605 [Amended]**

■ 63. In § 97.605, amend paragraph (b) by removing the subject heading.

**§ 97.606 [Amended]**

■ 64. In § 97.606, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

**§ 97.610 [Amended]**

■ 65. Amend § 97.610 by:

■ a. In paragraph (a)(1)(v), removing ''6,206'' and adding in its place ''6,223'';

■ b. In paragraph (a)(3)(v), removing ''1,429'' and adding in its place ''1,426'';

■ c. In paragraph (a)(4)(v), removing ''6,377'' and adding in its place ''6,381'';

■ d. In paragraph (a)(5)(v), removing ''564'' and adding in its place ''568'';

■ e. In paragraph (a)(6)(v), removing ''2,736'' and adding in its place ''2,743'';

■ f. In paragraph (a)(7)(v), removing ''4,978'' and adding in its place ''4,982'';

■ g. In paragraph (a)(8)(v), removing ''111'' and adding in its place ''110'';

■ h. In paragraph (a)(9)(v), removing ''523'' and adding in its place ''535'';

■ i. In paragraph (a)(10)(v), removing ''4,552'' and adding in its place ''4,559'';

■ j. In paragraph (a)(11)(v), removing ''2,845'' and adding in its place ''2,850'';

■ k. In paragraph (a)(12)(v), removing ''2,240'' and adding in its place ''2,242'';

■ l. In paragraph (a)(13)(v), removing ''1,177'' and adding in its place ''1,181'';

■ m. In paragraph (a)(14)(v), removing ''1,402'' and adding in its place ''1,401'';

■ n. In paragraph (a)(15)(v), removing ''5,297'' and adding in its place ''5,299''; and

■ o. In paragraph (a)(16)(v), removing ''1,867'' and adding in its place ''1,870'';

■ 66. Amend § 97.611 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding

in its place ''through (7) and (12) for a control period before 2023, or § 97.612(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ f. In paragraphs (b)(1)(iv) introductory text and (b)(1)(iv)(A), removing ''$SO_2$ annual'' and adding in its place ''$SO_2$ Group 1'';

■ g. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ h. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ i. Adding paragraph (b)(2)(i)(B);

■ j. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.612(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ k. Revising paragraph (b)(2)(ii)(B);

■ l. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ m. In paragraphs (b)(2)(iv) introductory text and (b)(2)(iv)(A), removing ''$SO_2$ annual'' and adding in its place ''$SO_2$ Group 1'';

■ n. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ o. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ p. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ q. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ r. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and

■ s. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

**§ 97.611 Timing requirements for CSAPR $SO_2$ Group 1 allowance allocations.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in a State, in accordance with § 97.612(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in Indian country within the borders of a State, in accordance with § 97.612(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 67. Amend § 97.612 by:

■ a. Adding a heading to paragraph (a) introductory text;

■ b. In paragraph (a)(1)(i), removing ''§ 97.611(a)(1);'' and adding in its place ''§ 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraphs (a)(3)(ii) and (iv) and (a)(4)(i);

■ f. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ g. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ h. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ i. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ j. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ k. Adding paragraph (a)(11)(ii);

■ l. Revising paragraph (a)(12);

■ m. Adding a subject heading to paragraph (b) introductory text;

■ n. In paragraph (b)(1)(i), removing ''§ 97.611(a)(1); or'' and adding in its

place ''§ 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period; or'';

■ o. Revising paragraphs (b)(3)(ii) and (b)(4)(i);

■ p. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';

■ q. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ r. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ s. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ t. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ u. Adding paragraph (b)(11)(ii); and

■ v. Revising paragraph (b)(12).

The additions and revisions read as follows:

**§ 97.612 CSAPR $SO_2$ Group 1 allowance allocations to new units.**

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $SO_2$ Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 1 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of $SO_2$ emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(1)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $SO_2$ Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 1 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of $SO_2$ emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(2)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§ 97.620 [Amended]**

■ 68. In § 97.620, amend paragraph (c)(3)(iii)(B) by removing ''to $SO_2$'' and adding in its place ''to CSAPR $SO_2$''.

■ 69. Amend § 97.621 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';
■ b. Adding paragraph (f)(2);
■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';
■ d. Adding paragraph (g)(2);
■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';
■ f. Adding paragraph (h)(2); and
■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2023,''.

The additions read as follows:

**§ 97.621 Recordation of CSAPR $SO_2$ Group 1 allowance allocations and auction results.**

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.612(a)(2) through (12), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.612(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 70. Amend § 97.624 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

**§ 97.624 Compliance with CSAPR $SO_2$ Group 1 emissions limitation.**

* * * * *

(c) *Selection of CSAPR $SO_2$ Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $SO_2$ Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $SO_2$ Group 1 source and the appropriate serial numbers.

* * * * *

■ 71. Amend § 97.625 by:
■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);
■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';
■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);
■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and
■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

**§ 97.625 Compliance with CSAPR $SO_2$ Group 1 assurance provisions.**

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the $SO_2$ emissions from each CSAPR $SO_2$ Group 1 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR $SO_2$ Group 1 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR $SO_2$ Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.606(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.606(c)(2)(iii), §§ 97.606(b) and 97.630 through 97.635, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.602, and the calculation formula in § 97.606(c)(2)(i).

* * * * *

**§ 97.634 [Amended]**

■ 72. In § 97.634, amend paragraph (d)(3) by removing ''or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,''.

## Subpart DDDDD—CSAPR $SO_2$ Group 2 Trading Program

■ 73. Amend § 97.702 by:

■ a. Revising the definition of ''allowance transfer deadline'';

■ b. In the definition of ''alternate designated representative'', removing ''or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'';

■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';

■ d. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';

■ e. In the definition of ''CSAPR $NO_X$ Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';

■ f. In the definition of ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';

■ g. Adding in alphabetical order a definition for ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'';

■ h. In the definition of ''designated representative'', removing ''or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'';

■ i. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.704(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.704(b)(2)(i)(B) and (b)(2)(ii)''; and

■ j. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revisions and additions read as follows:

**§ 97.702 Definitions.**

* * * * *

*Allowance transfer deadline* means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $SO_2$ Group 2 allowance transfer must be submitted for recordation in a CSAPR $SO_2$ Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR $SO_2$ Group 2 emissions limitation for such control period in accordance with §§ 97.706 and 97.724.

* * * * *

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.706(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $SO_2$ Group 2 allowances allocated for such control period to the group of one or more CSAPR $SO_2$ Group 2 units located in the State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR $SO_2$ Group 2 allowances purchased by an owner or operator of such CSAPR $SO_2$ Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $SO_2$ Group 2 units in accordance with the CSAPR $SO_2$ Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(h) or (i) of this chapter, multiplied by the sum of the State $SO_2$ Group 2 trading budget under § 97.710(a) and the State's variability limit under § 97.710(b) for such control period and divided by such State $SO_2$ Group 2 trading budget;

(2) Provided that, in the case of a unit that operates during, but has no amount of CSAPR $SO_2$ Group 2 allowances allocated under §§ 97.711 and 97.712 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR $SO_2$ Group 2 allowances for such control period equal to the unit's allowable $SO_2$ emission rate applicable to such control period, multiplied by a capacity factor of 0.85 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.24 (if the unit is a simple cycle combustion turbine during such control period), 0.67 (if the unit is a combined cycle combustion turbine during such control period), 0.74 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.36 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 8,760 hours/control period, and divided by 2,000 lb/ton.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $SO_2$ emissions during such control period from the group of one or more CSAPR $SO_2$ Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

* * * * *

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

* * * * *

**§ 97.704 [Amended]**

■ 74. In § 97.704, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

**§ 97.705 [Amended]**

■ 75. In § 97.705, amend paragraph (b) by removing the subject heading.

**§ 97.706 [Amended]**

■ 76. In § 97.706, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

**§ 97.710 [Amended]**

■ 77. Amend § 97.710 by:

■ a. In paragraph (a) introductory text, removing ''Group 1 allowances'' and adding in its place ''Group 2 allowances'';

■ b. In paragraph (a)(2)(v), removing ''2,711'' and adding in its place ''2,721'';

■ c. In paragraph (a)(3)(v), removing ''798'' and adding in its place ''801'';

■ d. In paragraph (a)(4)(v), removing ''798'' and adding in its place ''800''; and

■ e. In paragraph (a)(5)(v), removing ''2,658'' and adding in its place ''2,662'';

■ 78. Amend § 97.711 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.712(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ f. In paragraphs (b)(1)(iv) introductory text and (b)(1)(iv)(A), removing ''$SO_2$ annual'' and adding in its place ''$SO_2$ Group 2'';

■ g. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ h. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ i. Adding paragraph (b)(2)(i)(B);

■ j. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.712(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ k. Revising paragraph (b)(2)(ii)(B);

■ l. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ m. In paragraphs (b)(2)(iv) introductory text and (b)(2)(iv)(A), removing ''$SO_2$ annual'' and adding in its place ''$SO_2$ Group 2'';

■ n. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ o. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ p. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ q. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ r. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and

■ s. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

**§ 97.711 Timing requirements for CSAPR $SO_2$ Group 2 allowance allocations.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in a State, in accordance with § 97.712(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in Indian country within the borders of a State, in accordance with § 97.712(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 79. Amend § 97.712 by:

■ a. Adding a subject heading to paragraph (a) introductory text;

■ b. In paragraph (a)(1)(i), removing ''§ 97.711(a)(1);'' and adding in its place ''§ 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraphs (a)(3)(ii) and (iv) and (a)(4)(i);

■ f. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ g. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ h. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ i. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ j. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ k. Adding paragraph (a)(11)(ii);
■ l. Revising paragraph (a)(12);
■ m. Adding a subject heading to paragraph (b) introductory text;
■ n. In paragraph (b)(1)(i), removing ''§ 97.711(a)(1); or'' and adding in its place ''§ 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period; or'';
■ o. Revising paragraphs (b)(3)(ii) and (b)(4)(i);
■ p. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ q. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ r. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ s. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ t. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ u. Adding paragraph (b)(11)(ii); and
■ v. Revising paragraph (b)(12).

The additions and revisions read as follows:

**§ 97.712 CSAPR $SO_2$ Group 2 allowance allocations to new units.**

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $SO_2$ Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 2 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of $SO_2$ emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(1)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $SO_2$ Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 2 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of $SO_2$ emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(2)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this

section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§ 97.720 [Amended]**

■ 80. In § 97.720, amend paragraph (c)(3)(iii)(B) by removing ''to $SO_2$'' and adding in its place ''to CSAPR $SO_2$''.

■ 81. Amend § 97.721 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2023,''.

The additions read as follows:

**§ 97.721 Recordation of CSAPR $SO_2$ Group 2 allowance allocations and auction results.**

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.712(a)(2) through (12), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.712(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 82. Amend § 97.724 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

**§ 97.724 Compliance with CSAPR $SO_2$ Group 2 emissions limitation.**

* * * * *

(c) *Selection of CSAPR $SO_2$ Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $SO_2$ Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $SO_2$ Group 2 source and the appropriate serial numbers.

* * * * *

■ 83. Amend § 97.725 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

**§ 97.725 Compliance with CSAPR $SO_2$ Group 2 assurance provisions.**

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the $SO_2$ emissions from each CSAPR $SO_2$ Group 2 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR $SO_2$ Group 2 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR $SO_2$ Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.706(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.706(c)(2)(iii), §§ 97.706(b), and 97.730 through 97.735, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.702, and the calculation formula in § 97.706(c)(2)(i).

* * * * *

**§ 97.731 [Amended]**

■ 84. In § 97.731, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

**§ 97.734 [Amended]**

■ 85. In § 97.734, amend paragraph (d)(3) by removing ''or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,''.

## Subpart EEEEE—CSAPR $NO_X$ Ozone Season Group 2 Trading Program

■ 86. Amend § 97.802 by:

■ a. Revising the definition of ''allowance transfer deadline'',

■ b. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';

■ c. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';

■ d. In the definition of ''CSAPR $NO_X$ Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';

■ e. In the definition of ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';

■ f. Adding in alphabetical order definitions for ''CSAPR $NO_X$ Ozone Season Group 3 allowance'', ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'', and ''nitrogen oxides''; and

■ g. In the definition of ''State'', removing ''(2)(i) and (iii), (6) through (11), and (13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)''.

The revisions and additions read as follows:

**§ 97.802 Definitions.**

* * * * *

*Allowance transfer deadline* means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 2 emissions limitation for such control period in accordance with §§ 97.806 and 97.824.

* * * * *

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.806(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for such control period to a group of one or more base CSAPR $NO_X$ Ozone Season Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances purchased by an owner or operator of such base CSAPR $NO_X$ Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR $NO_X$ Ozone Season Group 2 units in accordance with the CSAPR $NO_X$ Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, multiplied by the sum of the State $NO_X$ Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b) for such control period and divided by the greater of such State $NO_X$ Ozone Season Group 2 trading budget or the sum of all amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period treated for purposes of this definition as having been allocated to or purchased in the State's auction for all such base CSAPR $NO_X$ Ozone Season Group 2 units;

(2) Provided that—

(i) For a control period before 2023 only, in the case of a base CSAPR $NO_X$ Ozone Season Group 2 unit that operates during, but has no amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under §§ 97.811 and 97.812 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period equal to the unit's allowable $NO_X$ emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple cycle combustion turbine during such control period), 0.71 (if the unit is a combined cycle combustion turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton;

(ii) The allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances for any control period taken into account for purposes of this definition exclude any CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for such control period under § 97.526(c)(1) or (3), or under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(1) or (3); and

(iii) In the case of the base CSAPR $NO_X$ Ozone Season Group 2 units at a base CSAPR $NO_X$ Ozone Season Group 2 source in a State with regard to which CSAPR $NO_X$ Ozone Season Group 2 allowances have been allocated under § 97.526(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.526(c)(2), or under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(2), an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control

period equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated for such control period to such units and the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR $NO_X$ Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, divided by the conversion factor determined under § 97.526(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(6) of this chapter, and rounded up to the nearest whole allowance.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more base CSAPR $NO_X$ Ozone Season Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

*CSAPR $NO_X$ Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(c), or § 97.826(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

* * * * *

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

* * * * *

**§ 97.805 [Amended]**

■ 87. In § 97.805, amend paragraph (b) by removing the subject heading.

■ 88. Amend § 97.811 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2017 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2017 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.812(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 20175 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2017 through 2022,'';

■ h. Adding paragraph (b)(2)(i)(B);

■ i. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.812(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ j. Revising paragraph (b)(2)(ii)(B);

■ k. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph; and

■ r. Adding paragraph (d).

The additions and revisions read as follows:

**§ 97.811 Timing requirements for CSAPR $NO_X$ Ozone Season Group 2 allowance allocations.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in a State, in accordance with § 97.812(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in a State, in accordance with § 97.812(b)(2) through (7), (10), and (12),

for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

(d) *Recall of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods after 2020.* Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, with regard to any CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to units or other entities located in a State listed in § 52.38(b)(2)(iv) of this chapter for a control period after 2020, whether such CSAPR $NO_X$ Ozone Season Group 2 allowances were allocated pursuant to this subpart or a SIP revision approved under § 52.38(b) of this chapter—

(1) For each such CSAPR $NO_X$ Ozone Season Group 2 allowance that was allocated for a given control period to any unit, including a unit subject to an exemption under § 97.805, and that was recorded in the compliance account for the source at which the unit is located before [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the Administrator will deduct from such compliance account a CSAPR $NO_X$ Ozone Season Group 2 allowance allocated for the same control period. The owners and operators of the unit shall ensure that sufficient CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for the appropriate control periods are available in such compliance account for completion of the deductions not later than [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) For each such CSAPR $NO_X$ Ozone Season Group 2 allowance that was allocated for a given control period to an entity other than a unit and that was recorded in a general account for the entity before [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] the Administrator will deduct from such general account a CSAPR $NO_X$ Ozone Season Group 2 allowance allocated for the same control period. The authorized account representative for the general account shall ensure that sufficient CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for the appropriate control periods are available in such general account for completion of the deductions not later than [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(3) The Administrator will record in the appropriate Allowance Management System accounts all deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances under paragraphs (d)(1) and (2) of this section.

(4) With respect to any CSAPR $NO_X$ Ozone Season Group 2 allowances for a given control period that the owners and operators of a unit fail to hold in the compliance account for the source at which the unit is located by the applicable deadline in accordance with paragraph (d)(1) of this section, or that the authorized account representative for a general account fails to hold in such general account by the applicable deadline in accordance with paragraph (d)(2) of this section, each such CSAPR $NO_X$ Ozone Season Group 2 allowance, and each day in such control period, shall constitute a separate violation of this subpart and the Clean Air Act.

■ 89. Amend § 97.812 by:

■ a. Adding a subject heading to paragraph (a) introductory text;

■ b. In paragraph (a)(1)(i), removing ''§ 97.811(a)(1);'' and adding in its place ''§ 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraphs (a)(3)(ii) and (iv);

■ f. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.'';

■ g. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ h. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ i. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ j. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ k. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ l. Adding paragraph (a)(11)(ii);

■ m. Revising paragraph (a)(12);

■ n. Adding a subject heading to paragraph (b) introductory text;

■ o. In paragraph (b)(1)(i), removing ''§ 97.811(a)(1); or'' and adding in its place ''§ 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period; or'';

■ p. Revising paragraph (b)(3)(ii);

■ q. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.'';

■ r. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';

■ s. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ t. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ u. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ v. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The

Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ w. Adding paragraph (b)(11)(ii); and

■ x. Revising paragraph (b)(12).

The additions and revisions read as follows:

**§ 97.812 CSAPR $NO_X$ Ozone Season Group 2 allowance allocations to new units.**

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 2 unit's monitoring systems under § 97.830(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 2 unit's monitoring systems under § 97.830(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§ 97.820 [Amended]**

■ 90. In § 97.820, amend paragraph (c)(3)(iii)(B) by removing ''to $NO_X$'' and adding in its place ''to CSAPR $NO_X$''.

■ 91. Amend § 97.821 by:

■ a. In paragraph (f), removing ''By July 1, 2021'' and adding in its place ''By July 1, 2022'', and removing ''in the fourth year'' and adding in its place ''in the third year'';

■ b. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2017 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2017 through 2022,'';

■ c. Adding paragraph (g)(2);

■ d. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2017 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2017 through 2022,'';

■ e. Adding paragraph (h)(2); and

■ f. In paragraphs (i) and (j), removing ''By February 15, 2018 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2018 through 2023.''

The additions read as follows:

**§ 97.821 Recordation of CSAPR $NO_X$ Ozone Season Group 2 allowance allocations and auction results.**

* * * * *

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.812(a)(2) through (12), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control period in

the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.812(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 92. Amend § 97.824 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

**§ 97.824 Compliance with CSAPR $NO_X$ Ozone Season Group 2 emissions limitation.**

* * * * *

(c) *Selection of CSAPR $NO_X$ Ozone Season Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Ozone Season Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Ozone Season Group 2 source and the appropriate serial numbers.

* * * * *

■ 93. Amend § 97.825 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data.''

The revisions read as follows:

**§ 97.825 Compliance with CSAPR $NO_X$ Ozone Season Group 2 assurance provisions.**

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 2 units at CSAPR $NO_X$ Ozone Season Group 2 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the $NO_X$ emissions from each base CSAPR $NO_X$ Ozone Season Group 2 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR $NO_X$ Ozone Season Group 2 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Ozone Season Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.806(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.806(c)(2)(iii), §§ 97.806(b), and 97.830 through 97.835, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.802, and the calculation formula in § 97.806(c)(2)(i).

* * * * *

■ 94. Amend § 97.826 by revising the section heading and paragraph (b) and adding paragraph (c) to read as follows:

**§ 97.826 Banking and conversion.**

* * * * *

(b) Any CSAPR $NO_X$ Ozone Season Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR $NO_X$ Ozone Season Group 2 allowance is deducted or transferred under § 97.811(c) or (d), § 97.823, § 97.824, § 97.825, § 97.827, or § 97.828 or removed under paragraph (c) of this section.

(c) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, the Administrator will remove CSAPR $NO_X$ Ozone Season Group 2 allowances from compliance accounts and general accounts and allocate in their place amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances as provided in paragraphs (c)(1) through (5) of this section and will record CSAPR $NO_X$ Ozone Season Group 3 allowances in lieu of initially recording CSAPR $NO_X$ Ozone Season Group 2 allowances as provided in paragraph (c)(6) of this section.

(1) By [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the Administrator will temporarily suspend acceptance of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR $NO_X$ Ozone Season Group 2 source located in a State listed in § 52.38(b)(2)(iii) of this chapter or Indian country within the borders of such a State, subject to the prior opportunity for temporary modifications of the holdings of each general account as described in paragraph (c)(1)(iv) of this section:

(i) The Administrator will remove all CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for the control

periods in 2017, 2018, 2019, and 2020 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR $NO_X$ Ozone Season Group 2 allowances removed from all such accounts under paragraph (c)(1)(i) of this section divided by the product of the sum of the variability limits for the control period in 2022 set forth in § 97.1010(b) for all States listed in § 52.38(b)(2)(v) of this chapter multiplied by a fraction whose numerator is the number of days from [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] through September 30, 2021, inclusive, and whose denominator is 153.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021, where such amount is determined as the quotient of the number of CSAPR $NO_X$ Ozone Season Group 2 allowances removed from such account under paragraph (c)(1)(i) of this section divided by the conversion factor determined under paragraph (c)(1)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(iv) The authorized account representative for a general account may elect to prevent the application of the provisions of paragraphs (c)(1)(i) through (iii) of this section to any or all CSAPR $NO_X$ Ozone Season Group 2 allowances held in such general account as follows:

(A) Not less than 30 days before taking the action described in paragraph (c)(1)(i) of this section, the Administrator will establish a reserve account for the sole purpose of temporarily holding CSAPR $NO_X$ Ozone Season Group 2 allowances that will not be subject to the provisions of paragraphs (c)(1)(i) through (iii) of this section.

(B) The authorized account representative for any general account may transfer any or all CSAPR $NO_X$ Ozone Season Group 2 allowances held in such general account to the reserve account, provided that each such transfer must be submitted not less than 7 days before the action described in paragraph (c)(1)(i) of this section. CSAPR $NO_X$ Ozone Season Group 2 allowances held in a compliance account may not be transferred directly to the reserve account but may be transferred to a general account and then transferred from the general account to the reserve account, subject to the deadline under this paragraph for submission of the transfer to the reserve account.

(C) Not more than 7 days after completion of the action described in paragraph (c)(1)(iii) of this section, the Administrator will transfer all CSAPR $NO_X$ Ozone Season Group 2 allowances held in the reserve account back to the general accounts from which such CSAPR $NO_X$ Ozone Season Group 2 allowances were transferred to the reserve account.

(2) As soon as practicable after approval of a SIP revision under § 52.38(b)(10) of this chapter for a State listed in § 52.38(b)(2)(iii) of this chapter (or a State listed in § 52.38(b)(2)(i) of this chapter for which a SIP revision under § 52.38(b)(6) of this chapter was previously approved), but not later than the allowance transfer deadline defined under § 97.1002 for the initial control period described with regard to such SIP revision in § 52.38(b)(10)(ii)(A) of this chapter, the Administrator will temporarily suspend acceptance of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account, unless otherwise provided in such approval of the SIP revision:

(i) The Administrator will remove from each such account all CSAPR $NO_X$ Ozone Season Group 2 allowances for such initial control period and each subsequent control period that were allocated to units located in such State under this subpart or § 97.526(c)(2) or that were allocated or auctioned to any entity under a SIP revision for such State approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, whether such CSAPR $NO_X$ Ozone Season Group 2 allowances were initially recorded in such account or were transferred to such account from another account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the $NO_X$ Ozone Season Group 2 trading budget set forth for such State in § 97.810(a) divided by the $NO_X$ Ozone Season Group 3 trading budget set forth for such State in § 97.1010(a).

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for each control period for which CSAPR $NO_X$ Ozone Season Group 2 allowances were removed from such account, where each such amount is determined as the quotient of the number of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period removed from such account under paragraph (c)(2)(i) of this section divided by the conversion factor determined under paragraph (c)(2)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(3) As soon as practicable after approval of a SIP revision under § 52.38(b)(10) of this chapter for a State listed in § 52.38(b)(2)(iii) of this chapter (or a State listed in § 52.38(b)(2)(i) of this chapter for which a SIP revision under § 52.38(b)(6) of this chapter was previously approved), but not before the completion of deductions under § 97.824 for the control period before the initial control period described with regard to such SIP revision in § 52.38(b)(10)(ii)(A) of this chapter and not later than the allowance transfer deadline defined under § 97.1002 for such initial control period, the Administrator will temporarily suspend acceptance of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every compliance account for a CSAPR $NO_X$ Ozone Season Group 2 source located in such State, provided that if the provisions of § 52.38(b)(2)(iii) of this chapter or a SIP revision approved under § 52.38(b)(6) or (9) of this chapter will no longer apply to any source in any State or Indian country within the borders of any State with regard to emissions occurring in such initial control period or any subsequent control period, the Administrator instead will permanently end acceptance of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers submitted under § 97.822 and will take the following actions with regard to every general account and every compliance account:

(i) The Administrator will remove from each such account all CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for all control periods before such initial control period.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR $NO_X$ Ozone Season Group 2 allowances removed from all such accounts under paragraph (c)(3)(i) of this section divided by the variability limit for such initial control period set forth for such State in § 97.1010(b).

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such initial

control period, where such amount is determined as the quotient of the number of CSAPR $NO_X$ Ozone Season Group 2 allowances removed from such account under paragraph (c)(3)(i) of this section divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(4)(i) Where, pursuant to paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator removes CSAPR $NO_X$ Ozone Season Group 2 allowances from the compliance account for a source located in a State that is not listed in § 52.38(b)(2)(v) of this chapter and for which no SIP revision has been approved under § 52.38(b)(10) of this chapter, or Indian country within the borders of such a State, the Administrator will not record CSAPR $NO_X$ Ozone Season Group 3 allowances in that compliance account but instead will allocate to and record in a general account CSAPR $NO_X$ Ozone Season Group 3 allowances for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, provided that the designated representative for such source identifies such general account in a submission to the Administrator within 180 days after the date on which the Administrator removes CSAPR $NO_X$ Ozone Season Group 2 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section.

(ii) If the designated representative for a source described in paragraph (c)(4)(i) of this section does not make a submission identifying a general account for recordation of CSAPR $NO_X$ Ozone Season Group 3 allowances within 180 days after the date on which the Administrator removes CSAPR $NO_X$ Ozone Season Group 2 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator will transfer the CSAPR $NO_X$ Ozone Season Group 3 allowances to a surrender account. A submission by the designated representative under paragraph (c)(4)(i) of this section after such a transfer has taken place shall have no effect.

(5)(i) In computing any amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances to be allocated to and recorded in general accounts under paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single account for purposes of such computation.

(ii) Following a computation for a group of general accounts in accordance with paragraph (c)(5)(i) of this section, the Administrator will allocate to and record in each individual account in such group a proportional share of the quantity of CSAPR $NO_X$ Ozone Season Group 3 allowances computed for such group, basing such shares on the respective quantities of CSAPR $NO_X$ Ozone Season Group 2 allowances removed from such individual accounts under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, as applicable.

(iii) In determining the proportional shares under paragraph (c)(5)(ii) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances computed for such group of accounts in accordance with paragraph (c)(5)(i) of this section, even where such adjustments cause the numbers of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to some individual accounts to equal zero.

(6) After the Administrator has carried out the procedures set forth in paragraph (c)(1), (2), or (3) of this section, upon any determination that would otherwise result in the initial recordation of any CSAPR $NO_X$ Ozone Season Group 2 allowances in any account, where if such allowances had been recorded before the Administrator had carried out such procedures the allowances would have been removed from such account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, respectively, the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 2 allowances but instead will record CSAPR $NO_X$ Ozone Season Group 3 allowances for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, in such account or another account identified in accordance with paragraph (c)(4) of this section.

(7) Notwithstanding any other provision of this subpart or subpart GGGGG of this part, CSAPR $NO_X$ Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR $NO_X$ Ozone Season Group 2 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(i) After the Administrator has carried out the procedures set forth in paragraph (c)(1) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit in a State listed in § 52.38(b)(2)(v) of this chapter or Indian country within the borders of such a State may satisfy a requirement to hold a given number of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control period in 2017, 2018, 2019, or 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021, where such amount of CSAPR $NO_X$ Ozone Season Group 3 allowances is computed as the quotient of such given number of CSAPR $NO_X$ Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (c)(1)(ii) of this section, rounded up to the nearest whole allowance.

(ii) After the Administrator has carried out the procedures set forth in paragraph (c)(3) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit in a State listed in § 52.38(b)(2)(iii) of this chapter (or a State listed in § 52.38(b)(2)(i) of this chapter for which a SIP revision under § 52.38(b)(6) of this chapter was previously approved) may satisfy a requirement to hold a given number of CSAPR $NO_X$ Ozone Season Group 2 allowances for a control period before the initial control period described with regard to the State's SIP revision in § 52.38(b)(10)(ii)(A) of this chapter by holding instead, in a general account established for this sole purpose, an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such initial control period or any previous control period, where such amount of CSAPR $NO_X$ Ozone Season Group 3 allowances is computed as the quotient of such given number of CSAPR $NO_X$ Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance.

**§ 97.831 [Amended]**

■ 95. In § 97.831, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

## Subpart FFFFF—Texas $SO_2$ Trading Program

■ 96. Amend § 97.902 by:

■ a. Revising the definition of ''allowance transfer deadline'';

■ b. In the definition of ''alternate designated representative'', removing ''Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,'';
■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';
■ d. In the definition of ''CSAPR $NO_X$ Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';
■ e. Adding in alphabetical order a definition for ''CSAPR $NO_X$ Ozone Season Group 3 Trading Program'';
■ f. In the definition of ''designated representative'', removing ''Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,''; and
■ g. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revision and additions read as follows:

**§ 97.902 Definitions.**

* * * * *

*Allowance transfer deadline* means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a Texas $SO_2$ Trading Program allowance transfer must be submitted for recordation in a Texas $SO_2$ Trading Program source's compliance account in order to be available for use in complying with the source's Texas $SO_2$ Trading Program emissions limitation for such control period in accordance with §§ 97.906 and 97.924.

* * * * *

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

* * * * *

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

* * * * *

**§ 97.905 [Amended]**

■ 97. In § 97.905, amend paragraph (b) by removing the subject heading.
■ 98. Amend § 97.911 by:
■ a. Adding a paragraph (a) subject heading; and
■ b. In Table 1 to paragraph (a)(1), capitalizing ''Trading Program'' each time it appears, removing the extra period at the end of the table entry for ''Big Brown Unit 1'', and removing ''Vistra Energy.'' and adding in its place ''Vistra.'' each time it appears.

The addition reads as follows:

**§ 97.911 Texas $SO_2$ Trading Program allowance allocations.**

(a) *Allocations from the Texas $SO_2$ Trading Program budget.* * * *

* * * * *

**§ 97.912 [Amended]**

■ 99. Amend § 97.912 by:
■ a. In paragraph (a)(3)(i), removing ''paragraph (b)'' and adding in its place ''paragraph (d)''; and
■ b. In paragraph (b)(2), removing ''February 15, 2022 and each subsequent February 15,'' and adding in its place ''February 15 of 2022 and 2023 and May 1 of each year thereafter,''.

**§ 97.920 [Amended]**

■ 100. In § 97.920, amend paragraph (d) by removing ''paragraphs (a), (b), and (c)'' and adding in its place ''paragraph (a), (b), or (c)''.
■ 101. Amend § 97.921 by:
■ a. Redesignating paragraph (b) as paragraph (b)(1), removing ''By July 1, 2019,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';
■ b. Adding paragraph (b)(2); and
■ c. Revising paragraph (c).

The addition and revision read as follows:

**§ 97.921 Recordation of Texas $SO_2$ Trading Program allowance allocations.**

* * * * *

(b) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each Texas $SO_2$ Trading Program source's compliance account the Texas $SO_2$ Trading Program allowances allocated to the Texas $SO_2$ Trading Program units at the source in accordance with § 97.911(a) for the control period in the third year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(c) By February 15 of each year from 2020 through 2023 and by May 1 of each year thereafter, the Administrator will record in each Texas $SO_2$ Trading Program source's compliance account the allowances allocated from the Texas $SO_2$ Trading Program Supplemental Allowance Pool in accordance with § 97.912 for the control period in the year before the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

* * * * *

■ 102. Amend § 97.924 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

**§ 97.924 Compliance with Texas $SO_2$ Trading Program emissions limitations.**

* * * * *

(c) *Selection of Texas $SO_2$ Trading Program allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific Texas $SO_2$ Trading Program allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas $SO_2$ Trading Program source and the appropriate serial numbers.

* * * * *

■ 103. Amend § 97.925 by:
■ a. Revising paragraph (b)(1) introductory text; and
■ b. In paragraph (b)(2)(ii), removing in the first sentence ''this section, the Administrator'' and adding in its place ''this section for a control period before 2023, or by the August 1 deadline for such calculations for a control period in 2023 or thereafter, the Administrator''.

The revision reads as follows:

**§ 97.925 Compliance with Texas $SO_2$ Trading Program assurance provisions.**

* * * * *

(b) * * *

(1) By June 1 of 2022 and 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

**§ 97.934 [Amended]**

■ 104. In § 97.934, amend paragraph (d)(3) by removing ''Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program,'' and adding in its place ''Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program,''.

■ 105. Add subpart GGGGG, consisting of §§ 97.1001 through 97.1035, to read as follows:

**Subpart GGGGG—CSAPR $NO_X$ Ozone Season Group 3 Trading Program**

Sec.
97.1001 Purpose.
97.1002 Definitions.
97.1003 Measurements, abbreviations, and acronyms.
97.1004 Applicability.
97.1005 Retired unit exemption.
97.1006 Standard requirements.
97.1007 Computation of time.
97.1008 Administrative appeal procedures.
97.1009 [Reserved]
97.1010 State $NO_X$ Ozone Season Group 3 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.
97.1011 Timing requirements for CSAPR $NO_X$ Ozone Season Group 3 allowance allocations.
97.1012 CSAPR $NO_X$ Ozone Season Group 3 allowance allocations to new units.
97.1013 Authorization of designated representative and alternate designated representative.
97.1014 Responsibilities of designated representative and alternate designated representative.
97.1015 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.
97.1016 Certificate of representation.
97.1017 Objections concerning designated representative and alternate designated representative.
97.1018 Delegation by designated representative and alternate designated representative.
97.1019 [Reserved]
97.1020 Establishment of compliance accounts, assurance accounts, and general accounts.
97.1021 Recordation of CSAPR $NO_X$ Ozone Season Group 3 allowance allocations and auction results.
97.1022 Submission of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.
97.1023 Recordation of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.
97.1024 Compliance with CSAPR $NO_X$ Ozone Season Group 3 emissions limitation.
97.1025 Compliance with CSAPR $NO_X$ Ozone Season Group 3 assurance provisions.
97.1026 Banking.
97.1027 Account error.
97.1028 Administrator's action on submissions.
97.1029 [Reserved]
97.1030 General monitoring, recordkeeping, and reporting requirements.
97.1031 Initial monitoring system certification and recertification procedures.
97.1032 Monitoring system out-of-control periods.
97.1033 Notifications concerning monitoring.
97.1034 Recordkeeping and reporting.
97.1035 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

## Subpart GGGGG—CSAPR $NO_X$ Ozone Season Group 3 Trading Program

**§ 97.1001 Purpose.**

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $NO_X$ Ozone Season Group 3 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

**§ 97.1002 Definitions.**

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multi-state $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $NO_X$ Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(c), § 97.826(c), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, of the amount of such CSAPR $NO_X$ Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $NO_X$ Ozone Season Group 3 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $NO_X$ Ozone Season Group 3 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $NO_X$ Ozone Season Group 3 allowances, the CSAPR $NO_X$ Ozone Season Group 3 unit will be treated as being allocated an amount (*i.e.,* zero) of CSAPR $NO_X$ Ozone Season Group 3 allowances.

*Allowable $NO_X$ emission rate* means, for a unit, the most stringent State or federal $NO_X$ emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $NO_X$ Ozone Season Group 3 allowances under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $NO_X$ Ozone Season Group 3 allowances.

*Allowance transfer deadline* means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 3 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for such

control period in accordance with §§ 97.1006 and 97.1024.

*Alternate designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.1025(b)(3) for certain owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $NO_X$ Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions in accordance with §§ 97.1006 and 97.1025.

*Auction* means, with regard to CSAPR $NO_X$ Ozone Season Group 3 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (12), or (13) of this chapter, of such CSAPR $NO_X$ Ozone Season Group 3 allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account and, for a CSAPR $NO_X$ Ozone Season Group 3 source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by this subpart.

*Base CSAPR $NO_X$ Ozone Season Group 3 source* means a source that includes one or more base CSAPR $NO_X$ Ozone Season Group 3 units.

*Base CSAPR $NO_X$ Ozone Season Group 3 unit* means a CSAPR $NO_X$ Ozone Season Group 3 unit, provided that any unit that would not be a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004(a) and (b) is not a base CSAPR $NO_X$ Ozone Season Group 3 unit notwithstanding the provisions of any SIP revision approved by the Administrator under § 52.38(b)(10), (12), or (13) of this chapter.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*Boiler* means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

*Bottoming-cycle unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

*Clean Air Act* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Coal-derived fuel* means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

*Cogeneration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle unit, useful power not less than 45 percent of total energy input;

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the device is combined cycle, the equipment described in paragraph (1) of this definition and any associated duct burner, heat recovery steam generator, and steam turbine.

*Commence commercial operation* means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.1005.

(i) For a unit that is a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.1005, for a unit that is not a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same natural person is authorized under §§ 97.1013(a) and 97.1015(a) as the designated representative for a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units located in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.1006(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated for such control period to the group of one or more base CSAPR $NO_X$ Ozone Season Group 3 units located in such State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances purchased by an owner or operator of such base CSAPR $NO_X$ Ozone Season Group 3 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR $NO_X$ Ozone Season Group 3 units in accordance with the CSAPR $NO_X$ Ozone Season Group 3 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(10), (12), or (13) of this chapter, multiplied by the sum of the State $NO_X$ Ozone Season Group 3 trading budget under § 97.1010(a) and the State's variability limit under § 97.1010(b) for such control period and divided by the greater of such State $NO_X$ Ozone Season Group 3 trading budget or the sum of all amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period treated for purposes of this definition as having been allocated to or purchased in the State's auction for all such base CSAPR $NO_X$ Ozone Season Group 3 units;

(2) Provided that—

(i) For a control period before 2023 only, in the case of a base CSAPR $NO_X$ Ozone Season Group 3 unit that operates during, but has no amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under §§ 97.1011 and 97.1012 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period equal to the unit's allowable $NO_X$ emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple cycle combustion turbine during such control period), 0.71 (if the unit is a combined cycle combustion turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton;

(ii) The allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition exclude any CSAPR $NO_X$ Ozone Season Group 3 allowances allocated for such control period under § 97.526(c)(3), under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(3), under § 97.826(c)(1) or (3), or under § 97.826(c)(4) or (5) pursuant to an exception under § 97.826(c)(1) or (3);

(iii) In the case of the base CSAPR $NO_X$ Ozone Season Group 3 units at a base CSAPR $NO_X$ Ozone Season Group 3 source in a State with regard to which CSAPR $NO_X$ Ozone Season Group 3 allowances have been allocated under § 97.526(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.526(c)(2), or under

§ 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(2), an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated for such control period to such units and the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR $NO_X$ Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, divided by the conversion factor determined under § 97.526(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(10) of this chapter, and rounded up to the nearest whole allowance;

(iv) In the case of the base CSAPR $NO_X$ Ozone Season Group 3 units at a base CSAPR $NO_X$ Ozone Season Group 3 source in a State with regard to which CSAPR $NO_X$ Ozone Season Group 3 allowances have been allocated under § 97.826(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.826(c)(2), or under § 97.826(c)(4) or (5) pursuant to an exception under § 97.826(c)(2), an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for such control period to such units and the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR $NO_X$ Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, divided by the conversion factor determined under § 97.826(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(10) of this chapter, and rounded up to the nearest whole allowance; and

(v) For purposes of the calculations under paragraph (1) of this definition for the control period in 2021 only, for each State the amount of the State $NO_X$ Ozone Season Group 3 trading budget shall be deemed to be increased by the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State under § 97.1010(d) and the amount of the State's variability limit shall be deemed to be increased by the product of the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State under § 97.1010(d) multiplied by 0.21, rounded to the nearest allowance;

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more base CSAPR $NO_X$ Ozone Season Group 3 units located in such State (and such Indian country) and having the common designated representative for such control period.

*Common stack* means a single flue through which emissions from 2 or more units are exhausted.

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $NO_X$ Ozone Season Group 3 source under this subpart, in which any CSAPR $NO_X$ Ozone Season Group 3 allowance allocations to the CSAPR $NO_X$ Ozone Season Group 3 units at the source are recorded and in which are held any CSAPR $NO_X$ Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the source's CSAPR $NO_X$ Ozone Season Group 3 emissions limitation in accordance with §§ 97.1006 and 97.1024.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $NO_X$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.1030 through 97.1035. The following systems are the principal types of continuous emission monitoring systems:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A $NO_X$ concentration monitoring system, consisting of a $NO_X$ pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ emissions, in parts per million (ppm);

(3) A $NO_X$ emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent $H_2O$;

(5) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

(6) An $O_2$ monitoring system, consisting of an $O_2$ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of $O_2$, in percent $O_2$.

*Control period* means the period starting May 1 of a calendar year, except as provided in § 97.1006(c)(3), and ending on September 30 of the same year, inclusive.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 1 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart BBBBB of this part, or by a State or permitting authority under a SIP revision approved by the Administrator

under § 52.38(b)(3), (4), or (5) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 1 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (14) through (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part or § 97.526(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(6), (7), (8), or (9) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, § 97.526(c), or § 97.826(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 allowance deduction* or *deduct CSAPR $NO_X$ Ozone Season Group 3 allowances* means the permanent withdrawal of CSAPR $NO_X$ Ozone Season Group 3 allowances by the Administrator from a compliance account (*e.g.,* in order to account for compliance with the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation) or from an assurance account (*e.g.,* in order to account for compliance with the assurance provisions under §§ 97.1006 and 97.1025).

*CSAPR $NO_X$ Ozone Season Group 3 allowances held* or *hold CSAPR $NO_X$ Ozone Season Group 3 allowances* means the CSAPR $NO_X$ Ozone Season Group 3 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 3 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 3 allowance transfer in accordance with this subpart.

*CSAPR $NO_X$ Ozone Season Group 3 emissions limitation* means, for a CSAPR $NO_X$ Ozone Season Group 3 source, the tonnage of $NO_X$ emissions authorized in a control period in a given year by the CSAPR $NO_X$ Ozone Season Group 3 allowances available for deduction for the source under § 97.1024(a) for such control period.

*CSAPR $NO_X$ Ozone Season Group 3 source* means a source that includes one or more CSAPR $NO_X$ Ozone Season Group 3 units.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 unit* means a unit that is subject to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $SO_X$ Group 1 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*CSAPR $SO_X$ Group 2 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*Designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $NO_X$ Ozone Season Group 3 units at a CSAPR $NO_X$ Ozone Season Group 3 source during a control period in a given year that

exceeds the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.1004(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

*Heat rate* means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*Life-of-the-unit, firm power contractual arrangement* means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

*Maximum design heat input rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

*Monitoring system* means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Newly affected CSAPR $NO_X$ Ozone Season Group 3 unit* means a unit that was not a CSAPR $NO_X$ Ozone Season Group 3 unit when it began operating but that thereafter becomes a CSAPR $NO_X$ Ozone Season Group 3 unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at a source respectively, any person who operates, controls, or supervises a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit;

(2) Any holder of a leasehold interest in a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit, provided that, unless expressly provided for in a leasehold agreement, ''owner'' shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CSAPR $NO_X$ Ozone Season Group 3 unit; and

(3) Any purchaser of power from a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

*Receive* or *receipt of* means, when referring to the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $NO_X$ Ozone Season Group 3 allowances, the moving of CSAPR $NO_X$ Ozone Season Group 3 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, transfer, or deduction.

*Reference method* means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

*Replacement, replace,* or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $NO_X$ Ozone Season Group 3 allowance, the unique identification number assigned to each CSAPR $NO_X$ Ozone Season Group 3 allowance by the Administrator.

*Solid waste incineration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program pursuant to § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter.

*Submit* or *serve* means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

*Topping-cycle unit* means a unit in which the energy input to the unit is first used to produce useful power, including electricity, where at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55\ (W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour* or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

*Useful thermal energy* means thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* in an absorption chiller).

*Utility power distribution system* means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

**§ 97.1003 Measurements, abbreviations, and acronyms.**

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

**§ 97.1004 Applicability.**

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $NO_X$ Ozone Season Group 3 units, and any source that includes one or more such units shall be a CSAPR $NO_X$ Ozone Season Group 3 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CSAPR $NO_X$ Ozone Season Group 3 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CSAPR $NO_X$ Ozone Season Group 3 unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $NO_X$ Ozone Season Group 3 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and

continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 3 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 3 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 3 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 3 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

**§ 97.1005 Retired unit exemption.**

(a)(1) Any CSAPR $NO_X$ Ozone Season Group 3 unit that is permanently retired shall be exempt from § 97.1006(b) and (c)(1), § 97.1024, and §§ 97.1030 through 97.1035.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $NO_X$ Ozone Season Group 3 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b)(1) A unit exempt under paragraph (a) of this section shall not emit any $NO_X$, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

**§ 97.1006 Standard requirements.**

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.1013 through 97.1018.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.1030 through 97.1035.

(2) The emissions data determined in accordance with §§ 97.1030 through 97.1035 shall be used to calculate allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances under §§ 97.1011(a)(2) and (b) and 97.1012 and

to determine compliance with the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.1030 through 97.1035 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$NO_X$ emissions requirements*—(1) *CSAPR $NO_X$ Ozone Season Group 3 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall hold, in the source's compliance account, CSAPR $NO_X$ Ozone Season Group 3 allowances available for deduction for such control period under § 97.1024(a) in an amount not less than the tons of total $NO_X$ emissions for such control period from all CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(ii) If total $NO_X$ emissions during a control period in a given year from the CSAPR $NO_X$ Ozone Season Group 3 units at a CSAPR $NO_X$ Ozone Season Group 3 source are in excess of the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall hold the CSAPR $NO_X$ Ozone Season Group 3 allowances required for deduction under § 97.1024(d); and

(B) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $NO_X$ Ozone Season Group 3 assurance provisions.* (i) If total $NO_X$ emissions during a control period in a given year from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $NO_X$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $NO_X$ Ozone Season Group 3 allowances available for deduction for such control period under § 97.1025(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.1025(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $NO_X$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $NO_X$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $NO_X$ Ozone Season Group 3 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $NO_X$ emissions exceed the sum, for such control period, of the State $NO_X$ Ozone Season Group 3 trading budget under § 97.1010(a), the State's variability limit under § 97.1010(b), and, for the control period in 2021 only, the product of the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State under § 97.1010(d) multiplied by 1.21, rounded to the nearest allowance.

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $NO_X$ emissions from the base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $NO_X$ Ozone Season Group 3 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $NO_X$ Ozone Season Group 3 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $NO_X$ Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

(ii) A base CSAPR $NO_X$ Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

(4) *Vintage of CSAPR $NO_X$ Ozone Season Group 3 allowances held for compliance.* (i) A CSAPR $NO_X$ Ozone Season Group 3 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 3 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $NO_X$ Ozone Season Group 3 allowance held for compliance

with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 3 allowance that was allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) *Allowance Management System requirements.* Each CSAPR $NO_X$ Ozone Season Group 3 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $NO_X$ Ozone Season Group 3 allowance is a limited authorization to emit one ton of $NO_X$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $NO_X$ Ozone Season Group 3 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR $NO_X$ Ozone Season Group 3 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $NO_X$ Ozone Season Group 3 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $NO_X$ emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.1030 through 97.1035 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.1016 for the designated representative for the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.1016 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(2) The designated representative of a CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall make all submissions required under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, except as provided in § 97.1018. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 3 source or the designated representative of a CSAPR $NO_X$ Ozone Season Group 3 source shall also apply to the owners and operators of such source and of the CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(2) Any provision of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 3 unit or the designated representative of a CSAPR $NO_X$ Ozone Season Group 3 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program or exemption under § 97.1005 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $NO_X$ Ozone Season Group 3 source or CSAPR $NO_X$ Ozone Season Group 3 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

**§ 97.1007 Computation of time.**

(a) Unless otherwise stated, any time period scheduled, under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, is not a business day, the time period shall be extended to the next business day.

**§ 97.1008 Administrative appeal procedures.**

The administrative appeal procedures for decisions of the Administrator under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program are set forth in part 78 of this chapter.

**§ 97.1009 [Reserved]**

**§ 97.1010 State $NO_X$ Ozone Season Group 3 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.**

(a) The State $NO_X$ Ozone Season Group 3 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Tables 1, 2, and 3 to this paragraph (a), respectively:

TABLE 1 TO PARAGRAPH (a)—STATE $NO_X$ OZONE SEASON GROUP 3 TRADING BUDGETS BY YEAR

[tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Alabama | 7,786 | 7,610 | 7,610 | 7,610 |
| Arkansas | 8,708 | 8,330 | 8,330 | 8,330 |
| Georgia | 7,808 | 7,808 | 7,808 | 7,808 |
| Illinois | 9,444 | 9,415 | 8,397 | 8,397 |
| Indiana | 12,500 | 11,998 | 11,998 | 9,447 |
| Iowa | 7,714 | 7,626 | 7,266 | 7,266 |
| Kansas | 5,384 | 5,384 | 5,384 | 5,384 |
| Kentucky | 14,384 | 11,936 | 11,936 | 11,936 |
| Louisiana | 15,402 | 14,871 | 14,871 | 14,871 |
| Maryland | 1,522 | 1,498 | 1,498 | 1,498 |
| Michigan | 12,727 | 11,767 | 9,803 | 9,614 |
| Mississippi | 6,315 | 6,315 | 6,315 | 6,315 |
| Missouri | 11,358 | 11,358 | 11,079 | 11,079 |
| New Jersey | 1,253 | 1,253 | 1,253 | 1,253 |
| New York | 3,137 | 3,137 | 3,137 | 3,119 |
| Ohio | 9,605 | 9,676 | 9,676 | 9,676 |
| Oklahoma | 8,717 | 8,717 | 8,717 | 8,717 |
| Pennsylvania | 8,076 | 8,076 | 8,076 | 8,076 |
| Tennessee | 4,367 | 4,367 | 4,367 | 4,367 |
| Texas | 42,312 | 41,995 | 41,807 | 41,807 |
| Virginia | 4,544 | 3,656 | 3,656 | 3,395 |
| West Virginia | 13,686 | 12,813 | 11,810 | 11,810 |
| Wisconsin | 4,875 | 4,875 | 4,622 | 4,104 |

TABLE 2 TO PARAGRAPH (a)—NEW UNIT SET-ASIDES BY YEAR

[tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Alabama | 148 | 144 | 144 | 144 |
| Arkansas | 174 | 167 | 167 | 167 |
| Georgia | 156 | 156 | 156 | 156 |
| Illinois | 181 | 181 | 173 | 173 |
| Indiana | 253 | 238 | 238 | 188 |
| Iowa | 146 | 145 | 138 | 138 |
| Kansas | 103 | 103 | 103 | 103 |
| Kentucky | 289 | 240 | 240 | 240 |
| Louisiana | 444 | 430 | 430 | 430 |
| Maryland | 31 | 33 | 33 | 33 |
| Michigan | 371 | 340 | 286 | 277 |
| Mississippi | 120 | 120 | 120 | 120 |
| Missouri | 227 | 227 | 222 | 222 |
| New Jersey | 27 | 27 | 27 | 27 |
| New York | 154 | 154 | 154 | 153 |
| Ohio | 285 | 291 | 291 | 291 |
| Oklahoma | 165 | 165 | 165 | 165 |
| Pennsylvania | 326 | 326 | 326 | 326 |
| Tennessee | 87 | 87 | 87 | 87 |
| Texas | 804 | 798 | 794 | 794 |
| Virginia | 91 | 76 | 76 | 68 |
| West Virginia | 273 | 261 | 236 | 236 |
| Wisconsin | 141 | 141 | 134 | 119 |

TABLE 3 TO PARAGRAPH (a)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY YEAR

[tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Alabama | 8 | 8 | 8 | 8 |
| Arkansas | ..... | ..... | ..... | ..... |
| Georgia | ..... | ..... | ..... | ..... |
| Illinois | ..... | ..... | ..... | ..... |
| Indiana | ..... | ..... | ..... | ..... |
| Iowa | 8 | 8 | 7 | 7 |
| Kansas | 5 | 5 | 5 | 5 |

TABLE 3 TO PARAGRAPH (a)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY YEAR—Continued

[tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Kentucky | ..... | ..... | ..... | ..... |
| Louisiana | 15 | 15 | 15 | 15 |
| Maryland | ..... | ..... | ..... | ..... |
| Michigan | 13 | 12 | 10 | 10 |
| Mississippi | 6 | 6 | 6 | 6 |
| Missouri | ..... | ..... | ..... | ..... |
| New Jersey | ..... | ..... | ..... | ..... |
| New York | 3 | 3 | 3 | 3 |
| Ohio | ..... | ..... | ..... | ..... |
| Oklahoma | 9 | 9 | 9 | 9 |
| Pennsylvania | ..... | ..... | ..... | ..... |
| Tennessee | ..... | ..... | ..... | ..... |
| Texas | 42 | 42 | 42 | 42 |
| Virginia | ..... | ..... | ..... | ..... |
| West Virginia | ..... | ..... | ..... | ..... |
| Wisconsin | 5 | 5 | 5 | 4 |

(b) The States' variability limits for the State $NO_X$ Ozone Season Group 3 trading budgets for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Table 4 to this paragraph (b):

TABLE 4 TO PARAGRAPH (b)—VARIABILITY LIMITS BY YEAR

[tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Alabama | 1,635 | 1,598 | 1,598 | 1,598 |
| Arkansas | 1,829 | 1,749 | 1,749 | 1,749 |
| Georgia | 1,640 | 1,640 | 1,640 | 1,640 |
| Illinois | 1,983 | 1,977 | 1,763 | 1,763 |
| Indiana | 2,625 | 2,520 | 2,520 | 1,984 |
| Iowa | 1,620 | 1,601 | 1,526 | 1,526 |
| Kansas | 1,131 | 1,131 | 1,131 | 1,131 |
| Kentucky | 3,021 | 2,507 | 2,507 | 2,507 |
| Louisiana | 3,234 | 3,123 | 3,123 | 3,123 |
| Maryland | 320 | 315 | 315 | 315 |
| Michigan | 2,673 | 2,471 | 2,059 | 2,019 |
| Mississippi | 1,326 | 1,326 | 1,326 | 1,326 |
| Missouri | 2,385 | 2,385 | 2,327 | 2,327 |
| New Jersey | 263 | 263 | 263 | 263 |
| New York | 659 | 659 | 659 | 655 |
| Ohio | 2,017 | 2,032 | 2,032 | 2,032 |
| Oklahoma | 1,831 | 1,831 | 1,831 | 1,831 |
| Pennsylvania | 1,696 | 1,696 | 1,696 | 1,696 |
| Tennessee | 917 | 917 | 917 | 917 |
| Texas | 8,886 | 8,819 | 8,779 | 8,779 |
| Virginia | 954 | 768 | 768 | 713 |
| West Virginia | 2,874 | 2,691 | 2,480 | 2,480 |
| Wisconsin | 1,024 | 1,024 | 971 | 862 |

(c) Each State $NO_X$ Ozone Season Group 3 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

(d) For the control period in 2021 only, the Administrator will determine for each State a supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances computed as the product, rounded to the nearest allowance, of the difference between the State $NO_X$ Ozone Season Group 2 trading budget for the control period in 2021 under § 97.810(a) and the State $NO_X$ Ozone Season Group 3 trading budget for the control period in 2021 under paragraph (a) of this section multiplied by a fraction whose numerator is the number of days from May 1, 2021 through [DATE 59 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], inclusive, and whose denominator is 153.

**§ 97.1011 Timing requirements for CSAPR $NO_X$ Ozone Season Group 3 allowance allocations.**

(a) *Existing units.* (1) CSAPR $NO_X$ Ozone Season Group 3 allowances are allocated, for the control periods in 2021 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $NO_X$ Ozone Season Group 3 unit, and not providing an allocation to a unit in such notice does

not constitute a determination that the unit is not a CSAPR $NO_X$ Ozone Season Group 3 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2020, during the control period in two consecutive years, such unit will not be allocated the CSAPR $NO_X$ Ozone Season Group 3 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $NO_X$ Ozone Season Group 3 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances to the unit in accordance with paragraph (b) of this section.

(3) For the control period in 2021 only, the Administrator will allocate to each unit to which CSAPR $NO_X$ Ozone Season Group 3 allowances are allocated under paragraph (a)(1) of this section a share of the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State in which the unit is located under § 97.1010(d), where each such unit's share will be computed as the difference between—

(i) The amount that would have been established as the unit's allocation for purposes of the notice of data availability referenced in paragraph (a)(1) of this section if the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances being allocated to the units in the State for purposes of such notice were increased by the supplemental amount determined for the State under § 97.1010(d); and

(ii) The amount that was actually established as the unit's allocation for purposes of the notice of data availability referenced in paragraph (a)(1) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1, 2021 and June 1, 2022, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in a State, in accordance with § 97.1012(a)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in a State, in accordance with § 97.1012(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

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

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 3 units) are in accordance with § 97.1012(a)(2) through (7) and (12) for a control period before 2023, or § 97.1012(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and §§ 97.1006(b)(2) and 97.1030 through 97.1035.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for a control period before 2023 contains any CSAPR $NO_X$ Ozone Season Group 3 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 3 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Ozone Season Group 3 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Ozone Season Group 3 units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Ozone Season Group 3 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in accordance with § 97.1012(a)(9), (10), and (12) and §§ 97.1006(b)(2) and 97.1030 through 97.1035. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Ozone Season Group 3 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 3 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 3 allowances in accordance with § 97.1012(a)(10).

(2) *Indian country new unit set-asides.* (i)(A) By June 1, 2021 and June 1, 2022, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR

$NO_X$ Ozone Season Group 3 unit in Indian country within the borders of a State, in accordance with § 97.1012(b)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in a State, in accordance with § 97.1012(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

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

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 3 units) are in accordance with § 97.1012(b)(2) through (7) and (12) for a control period before 2023, or § 97.1012(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and §§ 97.1006(b)(2) and 97.1030 through 97.1035.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for a control period before 2023 contains any CSAPR $NO_X$ Ozone Season Group 3 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 3 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Ozone Season Group 3 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Ozone Season Group 3 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Ozone Season Group 3 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in accordance with § 97.1012(b)(9), (10), and (12) and §§ 97.1006(b)(2) and 97.1030 through 97.1035. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Ozone Season Group 3 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 3 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 3 allowances in accordance with § 97.1012(b)(10).

(c) *Units incorrectly allocated CSAPR $NO_X$ Ozone Season Group 3 allowances.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR $NO_X$ Ozone Season Group 3 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), (12), or (13) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.1012(a)(2) through (7) and (12) and (b)(2) through (7) and (12), or under a provision of a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 as of May 1, 2021 and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(10), (11), (12), or (13) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit as of May 1, 2021 and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 3 units as of May 1, 2021; or

(B) The recipient is not located as of May 1 of the control period in the State from whose $NO_X$ Ozone Season Group 3 trading budget the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), (12), or (13) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, the recipient is not actually a

CSAPR $NO_X$ Ozone Season Group 3 unit as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 3 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.1021.

(3) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will deduct from the account in which such CSAPR $NO_X$ Ozone Season Group 3 allowances were recorded an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $NO_X$ Ozone Season Group 3 allowances. The authorized account representative shall ensure that there are sufficient CSAPR $NO_X$ Ozone Season Group 3 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $NO_X$ Ozone Season Group 3 allowances.

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

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $NO_X$ Ozone Season Group 3 trading budget the CSAPR $NO_X$ Ozone Season Group 3 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 3 allowances in the portion of the State $NO_X$ Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

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

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 3 allowances in the portion of the State $NO_X$ Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

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

**§ 97.1012 CSAPR $NO_X$ Ozone Season Group 3 allowance allocations to new units.**

(a) *Allocations from new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 3 units in each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances to the CSAPR $NO_X$ Ozone Season Group 3 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 3 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 3 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 3 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period;

(ii) CSAPR $NO_X$ Ozone Season Group 3 units whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1) is covered by § 97.1011(c)(2) or (3);

(iii) CSAPR $NO_X$ Ozone Season Group 3 units that are allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1), which allocation is terminated for such control period pursuant to § 97.1011(a)(2), and that operate during the control period immediately preceding such control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR $NO_X$ Ozone Season Group 3 units under § 97.1011(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(b)(1)(ii)(B) is covered by § 97.1011(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraph (a)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 3 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2021;

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 3 unit's monitoring systems under § 97.1030(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $NO_X$ Ozone Season Group 3 unit operates in the State after operating in another

jurisdiction and for which the unit is not already allocated one or more CSAPR $NO_X$ Ozone Season Group 3 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

(4) The allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.

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

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 3 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 3 unit the amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2023 only, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(i) and (ii), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(9) For a control period before 2023 only, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Ozone Season Group 3 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances referenced in the notice of data availability required under § 97.1011(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 3 unit the amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $NO_X$ Ozone Season Group 3 unit that is in the State, is allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1), and continues to be allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in accordance with § 97.1011(a)(2), an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.1011(a) for such control period, divided by the remainder of the amount of tons in the applicable State $NO_X$ Ozone Season Group 3 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2023, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or

for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 3 units located in Indian country within the borders of each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances to the CSAPR $NO_X$ Ozone Season Group 3 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 3 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 3 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 3 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR $NO_X$ Ozone Season Group 3 units under § 97.1011(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(b)(2)(ii)(B) is covered by § 97.1011(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(c)(5).

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraph (b)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 3 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2021; and

(ii) The first control period after the control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 3 unit's monitoring systems under § 97.1030(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

(4) The allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of $NO_X$ emissions during the control period, for a control period in 2023 or thereafter.

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

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 3 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 3 unit the amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2023 only, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(i) and (ii), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(9) For a control period before 2023 only, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Ozone Season Group 3 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances referenced in the notice of data availability required under § 97.1011(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in the Indian country new unit set-aside for the State

for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 3 unit the amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter covering such control period, include such unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances in the portion of the State $NO_X$ Ozone Season Group 3 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2023, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§ 97.1013 Authorization of designated representative and alternate designated representative.**

(a) Except as provided under § 97.1015, each CSAPR $NO_X$ Ozone Season Group 3 source, including all CSAPR $NO_X$ Ozone Season Group 3 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in § 97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.1016:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.1015, each CSAPR $NO_X$ Ozone Season Group 3 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in § 97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.1016,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.1002, and §§ 97.1014 through 97.1018, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

**§ 97.1014 Responsibilities of designated representative and alternate designated representative.**

(a) Except as provided under § 97.1018 concerning delegation of authority to make submissions, each submission under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR $NO_X$ Ozone Season Group 3 source and CSAPR $NO_X$ Ozone Season Group 3 unit for which the submission

is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(b) The Administrator will accept or act on a submission made for a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.1018.

**§ 97.1015 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.**

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 3 source and the CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 3 source and the CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.1016, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.1016 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $NO_X$ Ozone Season Group 3 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.1016 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

**§ 97.1016 Certificate of representation.**

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $NO_X$ Ozone Season Group 3 source, and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the CSAPR $NO_X$ Ozone Season Group 3 source and of each CSAPR $NO_X$ Ozone Season Group 3 unit at the source.

(4) The following certification statements by the designated representative and any alternate designated representative—

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program on behalf of the owners and operators of the source and of each CSAPR $NO_X$ Ozone Season Group 3 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR $NO_X$ Ozone Season Group 3 unit, or where a utility or industrial customer purchases power from a CSAPR $NO_X$ Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $NO_X$ Ozone Season Group 3 unit at the source; and CSAPR $NO_X$ Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 3 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CSAPR $NO_X$ Ozone Season Group 3 allowances by contract, CSAPR $NO_X$ Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 3 allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the designated representative and any alternate designated representative and the dates signed.

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section, § 97.516, or § 97.816 that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'', the phrase ''CSAPR $NO_X$ Ozone Season Group 1'', or the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' appeared in place of the phrase ''TR $NO_X$ Ozone Season'', the phrase ''CSAPR $NO_X$ Ozone Season Group 1'', or the phrase ''CSAPR $NO_X$ Ozone Season Group 2''.

**§ 97.1017 Objections concerning designated representative and alternate designated representative.**

(a) Once a complete certificate of representation under § 97.1016 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.1016 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.

**§ 97.1018 Delegation by designated representative and alternate designated representative.**

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1018 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

(f) A notice of delegation submitted under paragraph (c) of this section, § 97.518(c), or § 97.818(c) that complies with the provisions of paragraph (c) of this section except that it contains the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'' in

place of the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'' appeared in place of the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'', respectively.

**§ 97.1019 [Reserved]**

**§ 97.1020 Establishment of compliance accounts, assurance accounts, and general accounts.**

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.1016, the Administrator will establish a compliance account for the CSAPR $NO_X$ Ozone Season Group 3 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.1025(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $NO_X$ Ozone Season Group 3 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''

(E) The signature of the authorized account representative and any alternate authorized account representative and the dates signed.

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section, § 97.520(c)(1), or § 97.820(c)(1) that complies with the provisions of paragraph (c)(1) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'', ''CSAPR $NO_X$ Ozone Season Group 1'', or ''CSAPR $NO_X$ Ozone Season Group 2'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' in the required certification statement will be considered a complete application for a general account under paragraph (c)(1) of this section, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' appeared in place of the phrase ''TR $NO_X$ Ozone Season'', ''CSAPR $NO_X$ Ozone Season Group 1'', or ''CSAPR $NO_X$ Ozone Season Group 2''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

(B) Any alternate authorized account representative shall be authorized, and any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative.

(C) Each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to

make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR $NO_X$ Ozone Season'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new authorized account representative and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account.

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(ii) An alternate authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is

superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1020(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(vi) A notice of delegation submitted under paragraph (c)(5)(iii) of this section, § 97.520(c)(5)(iii), or § 97.820(c)(5)(iii) that complies with the provisions of paragraph (c)(5)(iii) of this section except that it contains the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'' in place of the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c)(5)(iii) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'' appeared in place of the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'', respectively.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $NO_X$ Ozone Season Group 3 allowance transfer under § 97.1022 for any CSAPR $NO_X$ Ozone Season Group 3 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $NO_X$ Ozone Season Group 3 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $NO_X$ Ozone Season Group 3 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $NO_X$ Ozone Season Group 3 allowance transfer under § 97.1022 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

(d) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a), (b), or (c) of this section.

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $NO_X$ Ozone Season Group 3 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.1014(a) and 97.1018 or paragraphs (c)(2)(ii) and (c)(5) of this section.

**§ 97.1021 Recordation of CSAPR $NO_X$ Ozone Season Group 3 allowance allocations and auction results.**

(a) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2021.

(b) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022, unless the State in which the source is located notifies the Administrator in writing by [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] of the State's intent to submit to the Administrator a complete SIP revision by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] meeting the requirements of § 52.38(b)(11)(i) through (iv) of this chapter.

(1) If, by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] the State does not submit to the Administrator such complete SIP revision, the Administrator will record by [DATE 210 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(2) If the State submits to the Administrator by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and the Administrator approves by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] such complete SIP revision, the Administrator will record by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source as provided in such approved, complete SIP revision for the control period in 2022.

(3) If the State submits to the Administrator by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and the Administrator does not approve by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF

THE FINAL RULE IN THE **FEDERAL REGISTER**] such complete SIP revision, the Administrator will record by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(c) By July 1, 2022, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control periods in 2023 and 2024.

(d) By July 1, 2023, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control periods in 2025 and 2026.

(e) [Reserved]

(f) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and August 1, 2022, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1012(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1012(a)(2) through (12), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and August 1, 2022, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1012(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1012(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15, 2022 and February 15, 2023, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1012(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15, 2022 and February 15, 2023, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1012(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR $NO_X$ Ozone Season Group 3 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.1011 or § 97.1012 or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $NO_X$ Ozone Season Group 3 allowances to a CSAPR $NO_X$ Ozone Season Group 3 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $NO_X$ Ozone Season Group 3 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR $NO_X$ Ozone Season Group 3 allowance is allocated or auctioned.

(m) Notwithstanding any other provision of this subpart, the Administrator will not record in any CSAPR $NO_X$ Ozone Season Group 3 source's compliance account any CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to any unit at the source, and will not record in any other entity's general account any CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the entity, until the Administrator has completed for the source or entity the deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances required under § 97.811(d).

**§ 97.1022 Submission of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.**

(a) An authorized account representative seeking recordation of a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR $NO_X$ Ozone Season Group 3 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR $NO_X$ Ozone Season Group 3 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $NO_X$ Ozone Season Group 3 allowance identified by serial number in the transfer.

**§ 97.1023 Recordation of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.**

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer that is correctly submitted under § 97.1022, the Administrator will record a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer by moving each CSAPR $NO_X$ Ozone Season Group 3 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $NO_X$ Ozone Season Group 3 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $NO_X$ Ozone Season Group 3 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.1024 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer is not correctly submitted under § 97.1022, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer that is not correctly submitted under § 97.1022, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

**§ 97.1024 Compliance with CSAPR $NO_X$ Ozone Season Group 3 emissions limitation.**

(a) *Availability for deduction for compliance.* CSAPR $NO_X$ Ozone Season Group 3 allowances are available to be deducted for compliance with a source's CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for a control period in a given year only if the CSAPR $NO_X$ Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.1023, of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances deducted equals the number of tons of total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 3 units at the source for such control period; or

(2) If there are insufficient CSAPR $NO_X$ Ozone Season Group 3 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $NO_X$ Ozone Season Group 3 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Ozone Season Group 3 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Ozone Season Group 3 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR $NO_X$ Ozone Season Group 3 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $NO_X$ Ozone Season Group 3 allowances that were recorded in the compliance account pursuant to § 97.1021 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $NO_X$ Ozone Season Group 3 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to § 97.526(c) or 97.826(c), in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $NO_X$ Ozone Season Group 3 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

**§ 97.1025 Compliance with CSAPR $NO_X$ Ozone Season Group 3 assurance provisions.**

(a) *Availability for deduction.* CSAPR $NO_X$ Ozone Season Group 3 allowances are available to be deducted for compliance with the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units in a State (and Indian country within the borders

of such State) only if the CSAPR $NO_X$ Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of base CSAPR $NO_X$ Ozone Season Group 3 sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section for compliance with the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1, 2022 and June 1, 2023 and by August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total $NO_X$ emissions exceed the State assurance level as described in § 97.1006(c)(2)(iii); and

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 3 units at CSAPR $NO_X$ Ozone Season Group 3 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the $NO_X$ emissions from each base CSAPR $NO_X$ Ozone Season Group 3 source.

(2) For each notice of data availability required in paragraph (b)(1)(ii) of this section and for any State (and Indian country within the borders of such State) identified in such notice as having base CSAPR $NO_X$ Ozone Season Group 3 units with total $NO_X$ emissions exceeding the State assurance level for a control period in a given year, as described in § 97.1006(c)(2)(iii):

(i) For a control period before 2023 only, by July 1 immediately after the promulgation of such notice, the designated representative of each base CSAPR $NO_X$ Ozone Season Group 3 source in each such State (and Indian country within the borders of such State) shall submit a statement, in a format prescribed by the Administrator, providing for each base CSAPR $NO_X$ Ozone Season Group 3 unit (if any) at the source that operates during, but is not allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for, such control period, the unit's allowable $NO_X$ emission rate for such control period and, if such rate is expressed in lb per mmBtu, the unit's heat rate.

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Ozone Season Group 3 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.1006(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.1006(c)(2)(iii), §§ 97.1006(b) and 97.1030 through 97.1035, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.1002, and the calculation formula in § 97.1006(c)(2)(i).

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(iii)(A) of this section. By October 1 immediately after the promulgation of such notice or notices, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iii)(A) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(iii)(B) of this section as having base CSAPR $NO_X$ Ozone Season Group 3 units with total $NO_X$ emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(iii)(B) of this section, as all of the owners and operators of a group of base CSAPR $NO_X$ Ozone Season Group 3 sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR $NO_X$ Ozone Season Group 3 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the owners and operators described in paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph

(b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section and after the recordation, in accordance with § 97.1023, of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(iii)(B) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(iii)(B) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances that the owners and operators are required to hold in accordance with § 97.1006(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(iii)(B) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.1006(c)(2)(i) for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(ii) For a control period before 2023 only, if any such data are revised by the owners and operators of a base CSAPR $NO_X$ Ozone Season Group 3 source and base CSAPR $NO_X$ Ozone Season Group 3 unit whose designated representative submitted such data under paragraph (b)(2)(i) of this section, as a result of a decision in or settlement of litigation concerning such submission, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.1006(c)(2)(i) for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved, provided that such litigation was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) and (ii) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the assurance account established by the Administrator for the appropriate base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $NO_X$ Ozone Season Group 3 allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR $NO_X$ Ozone Season Group 3 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances held in such assurance account equal to the amount of the decrease. If CSAPR $NO_X$ Ozone Season Group 3 allowances were transferred to such assurance account from more than one account, the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $NO_X$ Ozone Season Group 3 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions for such control period must be a CSAPR $NO_X$ Ozone Season Group 3 allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

**§ 97.1026 Banking.**

(a) A CSAPR $NO_X$ Ozone Season Group 3 allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR $NO_X$ Ozone Season Group 3 allowance that is held in a

compliance account or a general account will remain in such account unless and until the CSAPR $NO_X$ Ozone Season Group 3 allowance is deducted or transferred under § 97.1011(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028.

**§ 97.1027 Account error.**

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

**§ 97.1028 Administrator's action on submissions.**

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR $NO_X$ Ozone Season Group 3 allowances from or transfer CSAPR $NO_X$ Ozone Season Group 3 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

**§ 97.1029 [Reserved]**

**§ 97.1030 General monitoring, recordkeeping, and reporting requirements.**

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $NO_X$ Ozone Season Group 3 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.1002 and in § 72.2 of this chapter shall apply, the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CSAPR $NO_X$ Ozone Season Group 3 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.1002, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $NO_X$ Ozone Season Group 3 unit''. The owner or operator of a unit that is not a CSAPR $NO_X$ Ozone Season Group 3 unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR $NO_X$ Ozone Season Group 3 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $NO_X$ Ozone Season Group 3 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions and individual unit heat input (including all systems required to monitor $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.1031 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2021;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.1034(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit for which construction of a new stack or flue or installation of add-on $NO_X$ emission controls is completed after the applicable deadline under paragraph (b)(1), (2), or (3) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.1030 through § 97.1035, rather than the monitoring systems required under part 75 of this chapter;

(ii) $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.1035, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for $NO_X$ concentration, $NO_X$ emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine $NO_X$ mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.1035.

(2) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall operate the unit so as to discharge, or allow to be discharged, $NO_X$ to the atmosphere without accounting for all such $NO_X$ in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $NO_X$ mass discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.1005 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.1031(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

**§ 97.1031 Initial monitoring system certification and recertification procedures.**

(a) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.1030(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.1030(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the $NO_X$ emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the designated representative shall resubmit the petition to the Administrator under § 97.1035 to determine whether the approval applies under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.1030(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.1030(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.1030(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.1030(a)(1) that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under § 97.1030(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.1030(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.1033.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that

meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.1032(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved $NO_X$ emission rate (*i.e.,* $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential $CO_2$ concentration or the minimum potential $O_2$ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

**§ 97.1032 Monitoring system out-of-control periods.**

(a) *General provisions.* Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.1031 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.1031 for each disapproved monitoring system.

**§ 97.1033 Notifications concerning monitoring.**

The designated representative of a CSAPR $NO_X$ Ozone Season Group 3 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

**§ 97.1034 Recordkeeping and reporting.**

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting

requirements under § 75.73 of this chapter, and the requirements of § 97.1014(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.1031, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR $NO_X$ Ozone Season Group 3 unit is subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of $NO_X$ mass emissions) for such unit for the entire year and report the $NO_X$ mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR $NO_X$ Ozone Season Group 3 unit is not subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the $NO_X$ mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the $NO_X$ mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year.

(2) The designated representative shall report the $NO_X$ mass emissions data and heat input data for a CSAPR $NO_X$ Ozone Season Group 3 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2021, through June 30, 2021;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.1030(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CSAPR $NO_X$ Ozone Season Group 3 units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $NO_X$ mass emission data, heat input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification.* The designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on $NO_X$ emission controls and for all hours where $NO_X$ data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate $NO_X$ emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(1)(ii)(B) of this section, the $NO_X$ emission rate and $NO_X$ concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate $NO_X$ emissions.

**§ 97.1035 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.**

(a) The designated representative of a CSAPR $NO_X$ Ozone Season Group 3 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.1030 through 97.1034.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

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