

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 97**

**[FRL-9931-40-OAR]**

**Allocations of Cross-State Air Pollution Rule Allowances from  
New Unit Set-Asides for the 2015 Compliance Year**

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

**ACTION:** Final rule; notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of emission allowance allocations to certain units under the new unit set-aside (NUSA) provisions of the Cross-State Air Pollution Rule (CSAPR) federal implementation plans (FIPs) and is responding to objections to preliminary calculations. EPA has completed final calculations for the first round of NUSA allowance allocations for the 2015 compliance year and has posted spreadsheets containing the calculations on EPA's website. The final allocations are unchanged from the preliminary calculations. EPA will record the allocated allowances in sources' Allowance Management System (AMS) accounts by August 1, 2015.

**DATES:** [insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this action should be addressed to Robert Miller at (202) 343-9077 or miller.robert1@epa.gov or to Kenon Smith at (202) 343-9164 or smith.kenon@epa.gov.

**SUPPLEMENTARY INFORMATION:** Under the CSAPR FIPs, a portion of each state budget for each of the four CSAPR emissions trading programs is reserved as a NUSA from which allowances are allocated to eligible units through an annual one- or two-round process. In a NODA published in the *Federal Register* on June 1, 2015 (80 FR 30988), EPA described the allocation process and provided notice of preliminary calculations for the first-round 2015 NUSA allowance allocations. EPA also described the process for submitting any objections to the preliminary calculations.

In response to the June 1 NODA, EPA received three timely written objections, two late written objections, and several telephone inquiries. The objections and inquiries all concerned the question of whether EPA is correct to exclude emissions that occurred before a unit's monitor certification deadline from the emissions data used to calculate the NUSA allowance allocations. As explained below, under the regulations such emissions are properly excluded because they are not emissions during a "control period."

Under the CSAPR FIPs, an eligible unit's first-round NUSA allowance allocation for a given compliance year is generally based on the unit's emissions "during the immediately preceding control period" (that is, the control period in the year before the compliance year).<sup>1</sup> An eligible unit's second-round NUSA allowance allocation for a given compliance year is generally based on the positive difference, if any, between the unit's emissions "during such control period" (that is, the control period in the compliance year) and the unit's first-round NUSA allocation for the compliance year.<sup>2</sup> A "control period" is defined as either a calendar year or a May-September period - for the SO<sub>2</sub> and NO<sub>x</sub> annual programs and for the NO<sub>x</sub> ozone season program, respectively - subject in both cases to an exclusion, for any given unit, of periods before the unit's monitor certification deadline, thereby ensuring that the unit's "control periods" generally represent the periods for which the unit must hold CSAPR allowances equal to its emissions.<sup>3</sup> The

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<sup>1</sup> 40 CFR 97.412(a)(4)(i), 97.512(a)(4)(i), 97.612(a)(4)(i), and 97.712(a)(4)(i). First-round NUSA allocations may be affected by first-round NUSA over-subscription and rounding.

<sup>2</sup> 40 CFR 97.412(a)(9)(i), 97.512(a)(9)(i), 97.612(a)(9)(i), and 97.712(a)(9)(i). Second-round NUSA allocations occur only if all NUSA allowances were not allocated in the first round and may be affected by second-round NUSA over-subscription and rounding.

<sup>3</sup> 40 CFR 97.402, 97.502, 97.602, and 97.702 (definitions of "control period"); see also 40 CFR 97.406(c)(3), 97.506(c)(3),

emissions data used in calculating NUSA allowance allocations under the CSAPR FIPs thus properly exclude any emissions occurring before a unit's monitor certification deadline because such emissions are not emissions "during the immediately preceding control period" or "during such control period."<sup>4</sup>

EPA excluded emissions before units' monitor certification deadlines from the preliminary calculations of first-round 2015 NUSA allowance allocations discussed in the June 1 NODA. In the final calculations, EPA has likewise excluded emissions before units' monitor certification deadlines and has made no other changes to the data used in the preliminary calculations. The final first-round 2015 NUSA allowance allocations are therefore unchanged from the preliminary calculations.

The final unit-by-unit data and allowance allocation calculations are set forth in Excel spreadsheets titled

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97.606(c)(3), and 97.706(c)(3) (exclusion of periods before monitor certification deadline).

<sup>4</sup> The CSAPR regulations' exclusion of periods before a unit's monitor certification deadline from "control periods" is explicit with respect to control periods in and after 2015, the first year of obligations to hold CSAPR allowances. The regulations' only operative references to control periods before 2015 are the references in the NUSA allowance allocation provisions to "the immediately preceding control period," which, in the context of the 2015 compliance year, indicate 2014 "control periods." EPA interprets the NUSA provisions as intended to operate in the same manner in all compliance years and accordingly interprets the exclusion of periods before a unit's monitor certification deadline as applying to all control periods, including the 2014 "control periods."

"CSAPR\_NUSA\_2015\_NOx\_Annual\_1st\_Round\_Final\_Data",  
"CSAPR\_NUSA\_2015\_NOx\_OS\_1st\_Round\_Final\_Data", and  
"CSAPR\_NUSA\_2015\_SO2\_1st\_Round\_Final\_Data," available on EPA's  
website at <http://www.epa.gov/crossstaterule/actions.html>. The  
three spreadsheets show EPA's final determinations of first-  
round 2015 NUSA allocations under the CSAPR NO<sub>x</sub> annual, NO<sub>x</sub> ozone  
season, and SO<sub>2</sub> (Group 1 and Group 2) trading programs,  
respectively.

Pursuant to CSAPR's allowance recordation timing  
requirements, the allocated NUSA allowances will be recorded in  
sources' AMS accounts by August 1, 2015. EPA notes that an  
allocation or lack of allocation of allowances to a given unit  
does not constitute a determination that CSAPR does or does not  
apply to the unit. EPA also notes that NUSA allocations are  
subject to potential correction if a unit to which NUSA  
allowances have been allocated for a given compliance year is  
not actually an affected unit as of January 1 (or May 1 in the  
case of the NO<sub>x</sub> ozone season program) of the compliance year.<sup>5</sup>

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), and  
97.711(b).)

Dated: July 20, 2015.

Reid P. Harvey,

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<sup>5</sup> See 40 CFR 97.411(c), 97.511(c), 97.611(c), and 97.711(c).

Director, Clean Air Markets Division.

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