

submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Volatile organic compounds.

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

Dated: June 29, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011-17454 Filed 7-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA-HQ-OAR-2009-0491; FRL-9436-9]

[RIN 2060-AR01]

### Federal Implementation Plans for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin To Reduce Interstate Transport of Ozone

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

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** In this supplemental notice of proposed rulemaking (SNPR), EPA is providing an opportunity for public comment on our conclusion that emissions from Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states. EPA is also proposing Federal Implementation Plans (FIPs) to address (a) the emissions identified as significantly contributing to nonattainment and interference with maintenance and (b) the transport requirements with respect to the relevant NAAQS. EPA is proposing to implement the ozone season NO<sub>x</sub> program in the Transport Rule (Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States) as the FIPs for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin to address the emissions identified as significantly contributing to nonattainment or interfering with maintenance with respect to the 1997 ozone NAAQS. In addition, this notice identifies the budgets, associated variability limits, and allowance allocations that would be used for each state if EPA finalizes the FIPs proposed here.

**DATES:** Comments must be received on or before August 22, 2011.

A public hearing, if requested, will be held in Room 4128 at USEPA West (EPA West) [Old Customs Building], 1301

Constitution Avenue, NW., Washington, DC 20004 on July 21, 2011, beginning at 9 a.m.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-EPA-HQ-OAR-2009-0491, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Agency Web site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* [A-and-R-Docket@epa.gov](mailto:A-and-R-Docket@epa.gov).

- *Fax:* (202) 566-1741.

- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0491. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. This Docket Facility is open from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (929) 566-1742, fax (202) 566-1741.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning today's action should be addressed to Ms. Doris Price, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 343-9067; *fax number:* (202) 343-2356; *e-mail address:* [price.doris@epa.gov](mailto:price.doris@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Public Hearing

A public hearing, if requested, will be held in Room 4128 at USEPA West (EPA West) [Old Customs Building], 1301 Constitution Avenue, NW., Washington, DC 20004 on July 21, 2011, beginning at 9 a.m.

If you wish to request a hearing and present testimony or attend the hearing, you should notify, on or before July 14, 2011, Ms. Doris Price, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 343-9067; *fax number:* (202) 343-2356; *e-mail address:* [price.doris@epa.gov](mailto:price.doris@epa.gov). Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope

of which is discussed below. Any member of the public may file a written statement by the close of the comment period.

Written statements (duplicate copies preferred) should be submitted to Docket ID No. EPA-HQ-OAR-2009-0491, at the address listed above for submitted comments. The hearing location and schedule, including lists of speakers, will be posted on EPA's webpage at <http://www.epa.gov/airtransport>.

A verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the Office of Air and Radiation Docket and Information Center at the address listed for inspection for documents.

If no requests for a public hearing are received by close of business on July 14, 2011, a hearing will not be held and this announcement will be made on the webpage at the address shown above.

#### Glossary of Terms and Abbreviations

The following are abbreviations of terms used in this SNPR:

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

#### Outline

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- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

#### I. Today's Proposal

In this supplemental notice of proposed rulemaking (SNPR), EPA is providing an opportunity for public comment on its conclusion that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states.

In addition, EPA is proposing FIPs to address the transport requirements of the relevant NAAQS using programs created in the Transport Rule<sup>1</sup> that is being finalized simultaneously with this proposal. EPA is proposing to implement the ozone season NO<sub>x</sub> program in the Transport Rule as the FIPs for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin to address the emissions identified as significantly contributing to nonattainment or interfering with maintenance with respect to the 1997 ozone NAAQS.

In the final Transport Rule, EPA identified and finalized FIPs for 20 states with emissions that significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS, 18 states with emissions that significantly contribute to nonattainment or interfere with maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS, and 21 states with emissions that significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS.

In this notice, EPA is taking comment only on a) its conclusions that the six states identified above have emissions that significant contribute to

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

nonattainment and interfere with maintenance of the 1997 ozone NAAQS, and b) its decision to use the final Transport Rule programs as the FIPs to address these emissions in the six states.

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

EPA is also not taking comment on the emissions inventories used for the final Transport Rule modeling, including the emissions inventories for the six states identified above. EPA provided ample opportunity for comment on these inventories during the comment period for the proposed Transport Rule and the comment periods for the NODAs associated with that proposal. Inventories for all states included in the modeling domain were made available for public comment during that process. EPA made numerous changes to these inventories in response to public comments. Furthermore, the public had an

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

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

Notice of Data Availability for Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone: Request for Comment on Alternative Allocations, Calculation of Assurance Provision Allowance Surrender Requirements, New-Unit Allocations in Indian Country, and Allocations by States (76 FR 1109; January 7, 2011).

incentive to comment on the inventories for these six states, not only because these inventories affect the modeling for all states in the modeling domain, but also because EPA was proposing to include all six states in at least one of the Transport Rule trading programs and the inventories were used for allocating the emissions allowances to covered units. EPA proposed to include Kansas and Michigan in the ozone-season NO<sub>x</sub>, annual NO<sub>x</sub>, and annual SO<sub>2</sub> programs, proposed to include Oklahoma in the ozone-season NO<sub>x</sub> program, and proposed to include Iowa, Missouri and Wisconsin in the annual NO<sub>x</sub> and annual SO<sub>2</sub> programs. Commenters therefore had reason to look closely at all of the emission data for all six states that EPA made available in the proposal and the NODAs.

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

The statutory authority for this action is provided by the CAA, as amended, 42 U.S.C. 7401 *et. seq.* Section 110(a)(2)(D) of the CAA, often referred to as the "good neighbor" provision of the Act, requires states to prohibit certain emissions because of their impact on air quality in downwind states. Specifically, it requires all states, within 3 years of promulgation of a new or revised NAAQS, to submit SIPs that prohibit certain emissions of air pollutants because of the impact they would have on air quality in other states. 42 U.S.C. 7410(a)(2)(D). Section 301(a)(1) of the CAA gives the Administrator of EPA general authority to prescribe such regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 7601(a)(1). Section 110(c)(1) requires the Administrator to promulgate a FIP at any time within 2 years after the Administrator a) finds that a state has failed to make a required SIP submission, or that such a submission is incomplete, or b) disapproves a SIP submission, unless the state corrects the deficiency and the Administrator approves the SIP revision. 42 U.S.C. 7410(c)(1). Tribes are not required to submit state implementation plans. However, as explained in EPA's regulations outlining Tribal Clean Air Act authority, EPA is authorized to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit and get EPA approval of an implementation plan. See 40 CFR 49.11(a).

For each FIP in this rule, except the FIP for Kansas, EPA either has found that the state has failed to make a required 110(a)(2)(D)(i)(I) SIP submission, or has disapproved a SIP submission. In addition, EPA has

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

In addition, EPA has proposed a SIP Call under CAA 110(k)(5) for Kansas (76 FR 763, January 6, 2011), based on its conclusion that Kansas significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS. On March 9, 2007, EPA approved a 110(a)(2)(D)(i) SIP submission from the state of Kansas for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS on March 9, 2007 (72 FR 10608). This SIP submission did not rely on compliance with the Clean Air Interstate Rule (CAIR)<sup>3</sup> to satisfy the requirements of 110(a)(2)(D)(i)(I). The analysis for the final Transport Rule, however, demonstrates that emissions from Kansas significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in other states. Because the SIP does not prohibit these emissions, EPA is proposing to find it substantially inadequate to meet the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. EPA has proposed to give Kansas 18 months to submit a SIP to correct this deficiency. EPA has also proposed to give Kansas the option of asking EPA to impose a FIP beginning in the 2012 ozone season. Any final action on the proposed SIP Call will be taken in a separate action, and will establish a deadline for submission of a new 110(a)(2)(D)(i)(I) SIP. In this action we are taking comment, with respect to Kansas, only on our conclusion that Kansas significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS and our proposal to use the Transport Rule ozone-season NO<sub>x</sub> program as the FIP for Kansas. We are not taking comment on issues related solely to the proposed SIP Call for Kansas.

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

*B. Application of Methodologies To Identify Nonattainment and Maintenance Receptors and To Determine Significant Contribution and Interference With Maintenance*

In this SNPR, EPA is providing an opportunity for public comment on specific conclusions regarding emissions from six states that significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS. As noted above, EPA is not taking comment on the methodologies to identify nonattainment and maintenance receptors and to determine significant contribution and interference with maintenance with respect to the 1997 ozone NAAQS, which were finalized in the Transport Rule. Rather, we are accepting comment on the conclusion that application of these methodologies demonstrates that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in other states.

i. Iowa

The final Transport Rule determined that emissions from Iowa significantly contribute to nonattainment or interfere with maintenance of the annual PM<sub>2.5</sub> NAAQS and the 24-hour PM<sub>2.5</sub> NAAQS. EPA also finalized FIPs to include Iowa in the Transport Rule annual NO<sub>x</sub> and annual SO<sub>2</sub> programs to address the transport requirements related to the annual and 24-hour PM<sub>2.5</sub> NAAQS. These conclusions are not being reviewed or reopened for public comment.

The analysis for the final Transport Rule also identifies Iowa as a state that significantly contributes to nonattainment or interferes with maintenance only for a newly-identified 1997 ozone NAAQS maintenance receptor in Allegan County, MI. The methodology used to analyze significant contribution with respect to the 1997 ozone NAAQS, and its application to Iowa, is described in detail in the preamble to the final Transport Rule and in the TSDs entitled "Air Quality Modeling Final Rule TSD" and "Significant Contribution and State Emission Budgets Final Rule TSD," which are available in the public docket for this rule. In this SNPR, EPA specifically requests comment on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Iowa's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

ii. Kansas

The final Transport Rule determined that emissions from Kansas significantly contribute to nonattainment or interfere with maintenance of the 24-hour PM<sub>2.5</sub> NAAQS. EPA also finalized FIPs to include Kansas in the Transport Rule annual NO<sub>x</sub> and annual SO<sub>2</sub> programs to address the transport requirements related to the 24-hour PM<sub>2.5</sub> NAAQS. These conclusions are not being reviewed or reopened for public comment.

The analysis for the final Transport Rule also identifies Kansas as a state that significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS in another state. In its 2010 Transport Rule proposal, EPA proposed to determine that Kansas significantly contributes to or interferes with maintenance of the 1997 ozone NAAQS and also proposed to include Kansas in the Transport Rule ozone-season NO<sub>x</sub> program. In the analysis conducted for the final Transport Rule, however, Kansas is linked only to a newly-identified ozone maintenance receptor in Allegan County, MI. The methodology used to analyze significant contribution with respect to the 1997 ozone NAAQS, and its application to Kansas, is described in detail in the preamble to the final Transport Rule and in the TSDs entitled "Air Quality Modeling Final Rule TSD" and "Significant Contribution and State Emission Budgets Final Rule TSD," which are available in the public docket for this rule. In this SNPR, EPA specifically requests comment on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Kansas's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

iii. Michigan

The final Transport Rule determined that emissions from Michigan significantly contribute to nonattainment or interfere with maintenance of the annual and 24-hour PM<sub>2.5</sub> NAAQS. EPA also finalized FIPs to include Michigan in the Transport Rule annual NO<sub>x</sub> and annual SO<sub>2</sub> programs to address the transport requirements related to the annual and 24-hour PM<sub>2.5</sub> NAAQS. These conclusions are not being reviewed or reopened for public comment.

The analysis for the final Transport Rule also identifies Michigan as a state that significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS

in another state. In its 2010 Transport Rule proposal, EPA proposed to determine that Michigan significantly contributes to or interferes with maintenance of the 1997 ozone NAAQS and also proposed to include Michigan in the Transport Rule ozone-season NO<sub>x</sub> program. In the analysis conducted for the final Transport Rule, however, Michigan is linked only to a newly-identified ozone maintenance receptor in Harford County, MD. The methodology used to analyze significant contribution with respect to the 1997 ozone NAAQS, and its application to Michigan, is described in detail in the preamble to the final Transport Rule and in the TSDs entitled "Air Quality Modeling Final Rule TSD" and "Significant Contribution and State Emission Budgets Final Rule TSD," which are available in the public docket for this rule. In this SNPR, EPA specifically requests comment on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Michigan's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

iv. Missouri

With regard to Missouri, the final Transport Rule determined that emissions from Missouri significantly contribute to nonattainment or interfere with maintenance of the annual PM<sub>2.5</sub> NAAQS and the 24-hour PM<sub>2.5</sub> NAAQS. EPA also finalized FIPs to include Missouri in the Transport Rule annual NO<sub>x</sub> and annual SO<sub>2</sub> programs to address the transport requirements related to the annual and 24-hour PM<sub>2.5</sub> NAAQS. These conclusions are not being reviewed or reopened for public comment.

The analysis for the final Transport Rule also identifies Missouri as a state that significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS in Harris County, TX, Brazoria County, TX, and Allegan County, MI. The methodology used to analyze significant contribution with respect to the 1997 ozone NAAQS, and its application to Missouri, is described in detail in the preamble to the final Transport Rule and in the TSDs entitled "Air Quality Modeling Final Rule TSD" and "Significant Contribution and State Emission Budgets Final Rule TSD," which are available in the public docket for this rule, Docket ID No. EPA-HQ-OAR-2009-0491. In this SNPR, EPA requests comment specifically on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to

Missouri's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

v. Oklahoma

The final Transport Rule does not include any requirements that apply to sources in Oklahoma. The analysis conducted for the final Transport Rule, however, identifies Oklahoma as a state that significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS in Allegan County, MI. In its 2010 Transport Rule proposal, EPA proposed to determine that Oklahoma significantly contributes to or interferes with maintenance of the 1997 ozone NAAQS and also proposed to include Oklahoma in the Transport Rule ozone-season NO<sub>x</sub> program. In the analysis conducted for the final Transport Rule, however, Oklahoma is linked only to a newly-identified ozone maintenance receptor in Allegan County, MI. The methodology used to analyze significant contribution with respect to the 1997 ozone NAAQS, and its application to Oklahoma, is described in detail in the preamble to the final Transport Rule and in the TSDs entitled "Air Quality Modeling Final Rule TSD" and "Significant Contribution and State Emission Budgets Final Rule TSD," which are available in the public docket for this rule. In this SNPR, EPA specifically requests comment on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Oklahoma's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

vi. Wisconsin

The final Transport Rule determined that emissions from Wisconsin significantly contribute to nonattainment or interfere with maintenance of the annual PM<sub>2.5</sub> NAAQS and the 24-hour PM<sub>2.5</sub> NAAQS. EPA also finalized FIPs to include Wisconsin in the Transport Rule annual NO<sub>x</sub> and annual SO<sub>2</sub> programs to address the transport requirements related to the annual and 24-hour PM<sub>2.5</sub> NAAQS. These conclusions are not being reviewed or reopened for public comment.

The analysis for the final Transport Rule also identifies Wisconsin as a state that significantly contributes to nonattainment or interferes with maintenance only for a newly identified 1997 ozone NAAQS maintenance receptor in Allegan County, MI. The methodology used to analyze significant contribution with respect to the 1997 ozone NAAQS, and its application to Wisconsin, is described in detail in the preamble to the final Transport Rule and in the TSDs entitled "Air Quality Modeling Final Rule TSD" and "Significant Contribution and State Emission Budgets Final Rule TSD," which are available in the public docket for this rule. In this SNPR, EPA specifically requests comment on whether there are errors in the Agency's application of the Transport Rule methodologies with respect to Wisconsin's significant contribution to nonattainment and interference of the 1997 ozone NAAQS.

*C. Ozone Season NO<sub>x</sub> Emission Budgets for Six States*

In this SNPR, EPA is also presenting state ozone season NO<sub>x</sub> emission

budgets for covered units (generally large electric generating units)<sup>4</sup> in Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin pertaining to the proposed FIPs for the 1997 ozone NAAQS. EPA will finalize these budgets, adjusted if necessary based on comments received, as part of the FIPs for these six states. As noted above, EPA is not taking comment on the methodologies used to establish state budgets, variability limits, or state assurance levels. Rather, in this section, we are requesting comment on the state ozone season NO<sub>x</sub> emission budgets calculated using these methodologies. These budgets are presented in Table I.C-1. The associated variability limits and state assurance levels are presented in Table I.C-2.

TABLE I.C-1—OZONE SEASON NO<sub>x</sub> STATE EMISSION BUDGETS FOR ELECTRIC GENERATING UNITS BEFORE ACCOUNTING FOR VARIABILITY \*

[Tons]		
	2012-2013	2014 and beyond
Iowa .....	16,532	16,207
Kansas .....	13,536	10,998
Michigan .....	25,752	24,727
Missouri .....	22,762	21,073
Oklahoma .....	21,835	21,835
Wisconsin .....	13,704	13,216

NOTE—These state emission budgets apply to emissions from electric generating units greater than 25 MW and covered by the Transport Rule Program.

\* The impact of variability on budgets is discussed in the preamble to the final Transport Rule, section VI.E.

TABLE I.C-2—VARIABILITY LIMITS AND STATE ASSURANCE LEVELS FOR OZONE SEASON NO<sub>x</sub> EMISSIONS

[Tons]

	Emission variability limit (tons)		State emission assurance level (tons)	
	2012-2013	2014 and beyond	2012-2013	2014 and beyond
Iowa .....	3,472	3,403	20,004	19,610
Kansas .....	2,843	2,310	16,379	13,308
Michigan .....	5,408	5,193	31,160	29,920
Missouri .....	4,780	4,425	27,542	25,498
Oklahoma .....	4,585	4,585	26,420	26,420
Wisconsin .....	2,878	2,775	16,582	15,991

**Note:** Variability limits and assurance levels apply to each state's emissions from covered sources, as defined by

Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States;

Correction of SIP Approvals for 22 States: Final Rule.

<sup>4</sup> The applicability provisions for determining covered units in the named six states for the

Transport Rule ozone season NO<sub>x</sub> program are the same as those described in section VII.B,

"Applicability," of the preamble to the final Transport Rule.

*D. Allocation of Allowances to Covered Units*

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

EPA is taking comment only on the data inputs (e.g., corrections to the heat input value used for any particular unit) used in applying the allowance allocation methodology for existing units and on the resulting existing-unit allocations that we are proposing for the six states involved. EPA provided ample opportunity for comment on the methodologies used for allowance allocation and for establishing the set-asides both in the public comment period following the rule proposal and through the January 7, 2011 NODA. As discussed in section VII.D.1, “Allocations to Existing Units” of the preamble to the final Transport Rule, EPA has carefully evaluated and responded to numerous comments on this issue. These public comments were taken into account when finalizing the Transport Rule.<sup>5</sup>

EPA is proposing that new unit set-asides for allowance allocations to new units be created and implemented for each of these six states in the same manner as for the other states covered in the Transport Rule ozone season NO<sub>x</sub>

program. This approach is described in section VII.D.2, “Allocations to New Units,” of the preamble to the final Transport Rule. Table I.D-1 shows the proposed new allocation percentages for ozone season NO<sub>x</sub> allowances for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin. As noted above, EPA is taking comment only on the application of the new unit set-aside methodology to these states and on the resulting set-asides that we are proposing (i.e., whether the percentages for the set-asides are calculated properly). EPA provided ample opportunity for comment on the new unit set-aside methodology in the public comment period following the rule proposal.

**TABLE I.D-1—STATE NEW UNIT SET-ASIDES AS A PERCENT OF STATE OZONE SEASON NO<sub>x</sub> EMISSION BUDGETS**

	Ozone-season NO <sub>x</sub> (%)
Iowa .....	2
Kansas .....	2
Michigan .....	2
Missouri .....	3
Oklahoma .....	2
Wisconsin .....	6

As described in section VII.D.2, “Allocations to New Units,” of the preamble to the final Transport Rule, EPA is providing a mechanism to make allowances available in the future for new units built in Indian country. Table I.D-2 shows the Indian Country set-asides EPA is proposing to use to set aside ozone-season NO<sub>x</sub> allowances from the budgets of states included in this SNPR which have areas of Indian country within their boundaries. Under the final Transport Rule, EPA will administer these Indian country new unit set-asides regardless of whether a state replaces its Transport Rule FIP with an approved SIP. EPA is proposing to use the same mechanism for the states covered in this SNPR. EPA is taking comment only on the application of the Indian country new unit set-aside methodology to these states and on the resulting set-asides that we are proposing. EPA provided ample opportunity for comment on the methodologies for Indian country new unit set-asides through the January 7, 2011 NODA.

**TABLE I.D-2—NEW UNIT SET-ASIDE ALLOWANCES FOR INDIAN COUNTRY**  
[Tons]

	For ozone season NO <sub>x</sub> in 2012	For ozone season NO <sub>x</sub> in 2014
Iowa .....	17	16
Kansas .....	14	11
Michigan .....	26	25
Oklahoma .....	22	22
Wisconsin .....	14	13

*E. Implementation*

EPA is proposing that implementation of emission requirements for the six states addressed in this SNPR be identical to those for the other states covered by the Transport Rule ozone season NO<sub>x</sub> program. Refer to section IV.C-2, “FIP Authority for Each State and NAAQS Covered,” in the preamble to the final Transport Rule for a general discussion of EPA’s legal responsibility and authority to impose Federal Implementation Plans (FIPs) in certain circumstances where State Implementation Plans (SIPs) are deficient. The TSD entitled “Status of CAA 110(a)(2)(D)(i)(I) SIPs: Supplemental Proposed Rule TSD” identifies actions taken by EPA with respect to the 110(a)(2)(D)(i)(I) SIP requirements for the named states with respect to the relevant NAAQS. This TSD demonstrates that EPA has authority and a legal obligation to promulgate each FIP proposed in this SNPR.

To be consistent and synchronize with the other states covered by the Transport Rule ozone season NO<sub>x</sub> program, EPA has not adjusted the timing for compliance with the Transport Rule programs for these states.<sup>6</sup> EPA expects to finalize this rulemaking on or before November 1, 2011; the ozone season for 2012 does not begin until May 1, 2012. This will allow an approximately six-month lead time before the start of the 2012 ozone season. The vast majority of covered sources already have combustion controls installed; therefore, EPA expects that only a small number of sources will need to install combustion controls to comply, and the total

<sup>6</sup> As explained in the TSD, EPA proposed a SIP call requiring Kansas to address its deficiency for the 1997 Ozone NAAQS 110(a)(2)(D)(i)(I) requirements (76 FR 763). EPA intends to finalize the SIP call concurrent with the finalization of this action. This will enable Kansas to use the same remedy as the other states covered by the final Transport Rule ozone season NO<sub>x</sub> program. (Specifically, Kansas may request—through a letter submitted to EPA within three weeks of the final SIP call—that the Kansas ozone FIP be implemented at the same time as the other states.)

<sup>5</sup> EPA made some corrections to heat input data based on comments received from sources correcting such data.

number of installations is practical to achieve within the time period for additional construction. Individual sources may comply through other measures (such as purchasing additional allowances) in the event that it takes a particular source more than six months for installation of a given combustion control. EPA's rationale for determining that this lead time is sufficient is described in detail in section VII.C "Compliance Deadlines" of the preamble to the final Transport Rule.

EPA is also not proposing to alter the compliance deadlines or deadlines for submission of SIPs to replace the ozone FIPs for these six states. The submission deadlines and process for the six states covered by this SNPR, as well as the rationale behind them, can be found in section X "Transport Rule State Implementation Plans" of the preamble to the final Transport Rule.

#### *F. Expected Effects of the Proposed Action*

This proposal is projected to limit ozone season NO<sub>x</sub> emissions in Iowa, Kansas, Michigan, Missouri, Oklahoma, and Kansas beginning in 2012. The impacts of the Transport Rule inclusive of this proposal are discussed in section VIII of the preamble to the final Transport Rule. Table VIII–A.5 shows the state-by-state ozone season NO<sub>x</sub> emissions reductions (compared to the base case) expected in both 2012 and 2014. Overall ozone improvements, including these states and others, are displayed in Table VIII–B–2 and are discussed in greater detail in the Air Quality Modeling Final Rule TSD.<sup>7</sup> Overall benefits of the Transport Rule are discussed in section VIII of the preamble to the final Transport Rule and in the Regulatory Impact Analysis to the final Transport Rule.

## **II. Statutory and Executive Order Reviews**

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In view of its important policy implications and potential effect on the economy of over \$100 million, the Transport Rule program inclusive of this proposal has been judged to be an economically "significant regulatory action" within the meaning of the Executive Order. Accordingly, EPA submitted the final Transport Rule and this SNPR to OMB for review under EO 12866 and EO 13563 (76 FR 3821, January 21, 2011).

In addition, EPA prepared an analysis of the potential costs and benefits for the Transport Rule program inclusive of this proposal. This analysis is contained in the Regulatory Impact Analysis (RIA) for the Transport Rule.

The RIA available in the docket describes in detail the empirical basis for EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below. In doing this, EPA adheres to EO 13563, "Improving Regulation and Regulatory Review," (76 FR 3,821, January 21, 2011), which is a supplement to EO 12866. For additional information on how EPA's benefit-cost analyses conform to the requirements of EO 13563, please see section XII.A of the preamble to the final Transport Rule. EPA believes that there is no impact to the economy beyond that which is reported in the final Transport Rule.

1. What economic analyses were conducted for the rulemaking?

The analyses conducted for the Transport Rule program inclusive of this proposal provide several important analyses of impacts on public welfare. These include an analysis of the social benefits, social costs, and net benefits of the regulatory scenario. The economic analyses also address issues involving small business impacts, unfunded

mandates (including impacts for Tribal governments), and energy impacts.

2. What are the benefits and costs of the transport rule program?

The benefit-cost analysis shows that substantial net economic benefits to society are likely to be achieved due to reduction in emissions and improvements in ozone and PM<sub>2.5</sub> ambient concentrations resulting from the Transport Rule program inclusive of this proposal. For more information on the costs and benefits for the Transport Rule program inclusive of this proposal, please refer to Table VIII.C–4 of the preamble to the final Transport Rule.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden beyond that reported in the final Transport Rule. The information collection requirements for the Transport Rule Program inclusive of this proposal have been submitted for approval to Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) submitted to OMB describes the information collection requirements associated with the final Transport Rule program inclusive of this proposal and estimates the burden of compliance with all such requirements, such as the requirement for industry to monitor, record, and report emission data to EPA. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act*

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

After considering the economic impacts of the Transport Rule program inclusive of this proposal on small entities, as described in section XII.C of the preamble to the final Transport Rule, I certify that this action will not have a significant economic impact on a substantial number of small entities (No SISNOSE). This certification is based on the economic impact of the final Transport Rule and this proposal if finalized on all affected small entities across all industries affected. The

<sup>7</sup> This TSD for Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States: Final Rule is incorporated in its entirety by reference into this SNPR.

provisions of the Regulatory Flexibility Act are covered by and reported in section XII.C of the preamble to the final Transport Rule.

#### *D. Unfunded Mandates Reform Act*

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

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA held consultations with the governmental entities affected by the final Transport Rule and this proposal if finalized. As detailed in section XII.D of the preamble to the final Transport Rule, EPA participated in informational calls with the Environmental Council of the States (ECOS) and the National Governors Association to provide information about the January 7, 2011 NODA<sup>8</sup> directly to state and local officials and conducted consultations with federally recognized tribes prior to finalizing the final Transport Rule and issuing this SNPR for inclusion of six additional states (of which five—Iowa, Kansas, Michigan, Oklahoma, and Wisconsin—have Indian country within their boundaries).

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

#### *E. Executive Order 13132: Federalism*

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

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

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

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

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

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

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

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

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

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

#### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. As described in section XII.I of the preamble to the final Transport Rule, the Transport Rule program inclusive of this proposal will

<sup>8</sup> 76 FR 1109 (January 7, 2011).



require all sources to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority, low-income, and Tribal populations in the United States. During development of this Transport Rule program inclusive of this proposal, EPA considered its impacts on low-income, minority, and tribal communities in several ways and provided multiple opportunities for these communities to meaningfully participate in the rulemaking process. As described in section XII.J of the preamble to the final transport Rule, EPA believes that the final remedy in the Transport Rule program inclusive of this proposal addresses potential environmental justice concerns about localized hot spots and reduces ambient concentrations of pollution where they are most needed by sensitive and vulnerable populations.

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

## List of Subjects

### 40 CFR Part 52

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

### 40 CFR Part 97

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

Dated: July 6, 2011.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2011-17456 Filed 7-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1200]

#### Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before October 11, 2011.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map

(FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1200, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (e-mail) [luis.rodriquez1@dhs.gov](mailto:luis.rodriquez1@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (e-mail) [luis.rodriquez1@dhs.gov](mailto:luis.rodriquez1@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.