appendix. If the conventional cooking top is capable of operating in off mode, as defined in section 1.17 of this appendix, measure the average off mode power of the conventional cooking top, P_{OM}, in watts as specified in section 3.1.1.1.2 of this appendix.

3.2.2 *Combined cooking product standby mode and off mode power.* Make measurements as specified in section 3.1.2 of this appendix. If the combined cooking product is capable of operating in inactive mode, as defined in section 1.14 of this appendix, measure the average inactive mode power of the combined cooking product, $P_{IA,}$ in watts as specified in section 3.1.2.1 of this appendix. If the combined cooking product is capable of operating in off mode, as defined in section 1.17 of this appendix, measure the average off mode power of the combined cooking product, P_{OM}, in watts as specified in section 3.1.2.2 of this appendix.

* * * * *

[FR Doc. 2019–24331 Filed 11–13–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2016–0611; FRL–10001–85–Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan: Proposal of Best Available Retrofit Technology (BART) and Interstate Visibility Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In this supplemental notice of proposed rulemaking (SNPRM), the Environmental Protection Agency (EPA) is supplementing the proposal published on August 27, 2018 to affirm the Agency's October 2017 Federal Implementation Plan (FIP), which partially approved the 2009 Texas Regional Haze State Implementation Plan (SIP) submission and promulgated a Federal Implementation Plan (FIP) for Texas to address certain outstanding Clean Air Act (CAA) regional haze requirements. The October 2017 FIP established the Texas SO_2 Trading Program, an intrastate trading program for certain electric generating units (EGUs) in Texas, as a Best Available Retrofit Technology (BART) alternative for sulfur dioxide (SO_2). In response to certain comments received on the August 2018 proposal to affirm the October 2017 FIP, we are proposing revisions to the Texas SO_2 Trading Program, including provisions for penalties on the total annual SO_2 emissions from sources covered by the rule exceeding a proposed assurance level.

DATES: Comments must be received on or before January 13, 2020.

Public Hearing: A public hearing, if requested, will be held in Room 5220, 1201 Elm Street, Suite 500, Dallas, Texas 75270 on December 9, 2019 beginning at 1:00 p.m. If you wish to request a hearing and present testimony or attend the hearing, you should notify, on or before November 27, 2019, Ms. Jennifer Huser, Air and Radiation Division (ARSH), Environmental Protection Agency Region 6, 1201 Elm Street, Suite 500; telephone number: (214) 665–7347; email address: *huser.jennifer@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–R06–OAR–2016–0611, at the address listed above for submitted comments. The hearing location and schedule will be posted on EPA's web page at *https://www.epa.gov/publicnotices/notices-search/location/Texas.* Verbatim English—language transcripts of the hearing and written statements will be included in the rulemaking docket. If no requests for a public hearing are received by close of business on November 27, 2019, a hearing will not be held, and this announcement will be made on the web page at the address shown above.

For additional logistical information regarding the public hearing please see the **SUPPLEMENTARY INFORMATION** section of this action.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0611, at *http://www.regulations.gov* or via email to *R6_TX-BART@epa.gov.*

Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically 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. The 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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at the EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Jennifer Huser, Air and Radiation Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, telephone 214–665–7347; email address *Huser.Jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

A public hearing, if requested, will provide interested parties the opportunity to present information and opinions to us concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all significant oral and written comments received on our proposal.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to three minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearing. Verbatim English—language transcripts of the hearing and written statements will be included in the rulemaking docket.

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I. Background

On August 27, 2018, we proposed to affirm our October 2017 FIP and provided an opportunity to comment on relevant aspects of the rule, as well as other specified related issues.[1] To address the SO_2 BART requirements for EGUs, we proposed to affirm our October 2017 FIP, which relied on an intrastate SO_2 trading program as a BART alternative for certain EGUs in Texas (''Texas SO_2 Trading Program''). We proposed to affirm our approval of the portion of the 2009 Texas Regional Haze SIP that addresses the BART requirement for EGUs for particulate matter (PM). We also proposed to affirm our determination that the BART alternatives addressing SO_2 and nitrogen oxides (NO_X) BART at Texas' EGUs were adequate to satisfy the interstate visibility transport requirements for the following national ambient air quality standards (NAAQS): (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24-hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2. The August 2018 proposal contains more detailed discussion of previous EPA actions on Texas Regional Haze and the rationale for our proposed action to affirm.

The comment period on the August 2018 proposal closed on October 26, 2018. We received timely comments on the proposal, and we will address all comments received on the original proposal and on this supplemental proposal in our final action.

II. Public Comment

We are reopening the public comment period with respect to the specific proposed changes in this notice. Comments are due January 13, 2020. EPA is not reopening the comment period for any other aspects of our August 2018 proposal. Comments should be limited to the items discussed in this supplemental proposal.

III. Texas SO_2 BART Alternative Trading Program

A. Proposed Changes to Specific Texas SO_2 Trading Program Features

In this supplemental proposal, EPA proposes to make four sets of amendments to the Texas SO_2 Trading Program: (1) The addition of assurance provisions; (2) revisions to the Supplemental Allowance Pool allocation provisions; (3) termination of the opt-in provisions; and (4) revision of the allowance recordation provisions. The four subsections of this section discuss each of these proposed sets of amendments in turn, along with the associated rationales. In general, these proposed changes, if finalized, would strengthen our finding in October 2017,[2] which we proposed to affirm in August 2018, that the Texas SO_2 Trading Program will result in SO_2 emission levels from Texas EGUs that are similar to or less than the emission levels from Texas EGUs that would have been realized had Texas continued to participate in the SO_2 trading program under the Cross-State Air Pollution Rule (CSAPR).[3]

The proposed changes to the Texas SO_2 Trading Program would be implemented through revisions to the existing regulations at 40 CFR part 97, subpart FFFFF. A redline/strike-out document showing subpart FFFFF with the proposed revisions has been added to the docket for this proposed action.

1. Addition of Assurance Provisions

In the August 2018 proposal, EPA proposed to affirm that the Texas SO_2 Trading Program is an appropriate SO_2 BART alternative for EGUs in Texas on the basis that the program ''will achieve greater reasonable progress than BART towards restoring visibility, consistent with the June 2012 'CSAPR better than BART' and September 2017 'CSAPR still better than BART' determinations.'' [4] (Further background on those determinations is set forth in the August 2018 proposal.) In support, EPA explained that the Texas SO_2 Trading Program, despite some difference in the scope of coverage of EGUs, would be comparable in stringency to, if not more stringent than, the CSAPR SO_2 trading program as applied to Texas sources.[5] EPA further explained that its analysis of the stringency of the CSAPR program was premised on the CSAPR program's structure of state emission budgets plus ''assurance levels.'' [6]

In each of the CSAPR trading programs, EPA set an assurance level for each state in order to ensure that, despite the broad, interstate trading region, emissions reductions would be achieved appropriately in a geographically distributed way commensurate with states' ''good neighbor'' obligations as determined by EPA through its analysis under CAA section 110(a)(2)(D)(i)(I).[7] EPA set these assurance levels for states by first establishing a ''variability limit'' as a percentage of each state's total emission budget in order to account for year-to-year variability in the amount of fossil fuel combusted to produce electricity required to meet customer demand. EPA then set the amount of each state's assurance level as the sum of the state's budget and its variability limit.[8] If a state's sources' emissions exceed the statewide assurance level, the emissions above that level are ''penalized'' through a three-to-one allowance surrender ratio.[9] The CSAPR assurance levels are thus designed to provide the sources in each state with a strong incentive not to exceed a state-specific target in any compliance period, consistent with the state-specific nature of the good neighbor obligations, while providing

[1] 83 FR 43586 (August 27, 2018). Additional information regarding the regulatory background of the CAA and regional haze requirements can be found in the October 2017 FIP, 82 FR 48324 (Oct. 17, 2017), and our January 2017 notice of proposed rulemaking for Texas Regional Haze, 82 FR 912 (Jan. 4, 2017).

[2] 82 FR 48324, 48329.

[3] *See* 83 FR at 43599.

[4] *Id.* at 43590.

[5] *Id.* at 43591–92.

[6] *Id.* at 43594–95.

[7] 76 FR 48208, 48265–66 (Aug. 8, 2011).

[8] *Id.* at 48266–68.

[9] 83 FR at 43594–95.

flexibility to respond to year-to-year variability in electricity demand.[10]

The Texas SO_2 Trading Program, as promulgated in October 2017, does not include an assurance level. In contrast to CSAPR, the Texas SO_2 Trading Program does not allow for sources to purchase allowances from sources in other states. Therefore, the number of allowances available to the Texas sources is limited by the total number of allowances allocated under the program. While this limits the average annual emissions under the program, we recognize, as discussed in further detail below, that the potential use of banked allowances and allowances allocated from the Supplemental Allowance Pool could result in potentially significant year-to-year variability in emissions. Therefore, the EPA is proposing to add an assurance level provision to the Texas SO_2 Trading Program in order to maintain consistency with the CSAPR program and to provide additional support for our determination that SO_2 emissions under the Texas SO_2 Trading Program will remain below the requisite level on an annual basis. In order to explain our proposed determination of the appropriate stringency at which to set the assurance level, in this supplemental proposal we will first review our prior analysis of the stringency of the Texas SO_2 Trading Program in the August 27, 2018 notice. We will then summarize the relevant public comments EPA received on this issue in response to that notice, and propose an appropriate assurance level based on our review of the information.

In the August 2018 proposal, we summarized relevant Texas-related aspects of the 2011 proposed and 2012 final ''CSAPR better than BART'' rulemaking.[11] We described how, for purposes of comparing the impacts of CSAPR and BART nationwide in the 2011 proposed rule, EPA initially used a model projection of 266,600 tons for Texas EGUs' annual SO_2 emissions under the CSAPR program.[12] We then explained that because of intervening increases in some CSAPR emissions budgets—including an increase of 50,517 tons in the CSAPR SO_2 budget for Texas—EPA conducted a sensitivity analysis for the 2012 final rule to assess the effects of the CSAPR budget adjustments, making a conservative assumption that SO_2 emissions from Texas EGUs under CSAPR could potentially increase by the full amount of the Texas budget increase, or up to 317,100 tons per year (266,600 + 50,517).[13] Finally, we noted the results of that sensitivity analysis, namely that CSAPR was expected to provide for greater reasonable progress than BART nationwide even with potential SO_2 emissions from Texas EGUs under CSAPR as high as 317,100 tons.[14]

In our August 2018 proposal, EPA used this benchmark (317,100 tons of SO_2 emissions per year) to gauge whether the Texas SO_2 Trading Program was sufficiently stringent for EPA to continue to rely on the BART-alternative analysis we conducted in the 2012 ''CSAPR better than BART'' rulemaking. EPA found that the ''annual average emissions'' under the Texas SO_2 Trading Program would remain below the 317,100 tons-per-year benchmark relied upon in the 2012 sensitivity analysis, because the yearly allocation to Texas EGUs under the Texas SO_2 Trading Program was 238,393 tons of allowances, plus 10,000 tons allocated to the Supplemental Allowance Pool.[15] Although there may be some year-to-year variability in emissions, EPA reasoned that variability for units within the Texas program would be constrained by the number of banked allowances and the number of allowances that can be allocated in a control period from the Supplemental Allowance Pool. (Annual allocations from the Supplemental Allowance Pool are limited to 54,711 tons.) The total number of allowances that can be allocated in a single year is therefore 293,104, which is the sum of the 238,393-ton budget for existing units plus 54,711. EPA further explained that certain sources that had been subject to the CSAPR program, but which are not covered by the Texas SO_2 Trading Program, emitted less than 27,500 tons of SO_2 in 2016 and their emissions were not projected to significantly increase from this level. Taking into account these figures, as well as recent emissions data, EPA concluded that ''annual average EGU emissions'' under the Texas SO_2 Trading Program were anticipated to remain ''well below'' the 317,100 ton per year benchmark and would be similar to emissions anticipated under CSAPR. Relying on this information, EPA concluded that the weight of evidence supported the conclusion that the Texas SO_2 Trading Program met the requirements of a BART alternative.[16]

Commenters on the August 2018 proposal identified several specific concerns with the Texas SO_2 Trading Program. EPA has considered these comments, and they inform this supplemental proposal. Stated broadly, these commenters are concerned that the Texas SO_2 Trading Program is insufficiently stringent to meet the requirements for a BART alternative under 40 CFR 51.308(e)(2). Commenters specifically questioned EPA's reliance on the 317,100-ton benchmark and argued that the Texas SO_2 Trading Program would, unlike source-specific BART control requirements, allow for emissions to increase compared to recent emission levels. Commenters also identified the availability of supplemental allowances, the issuance of allocations to already-retired units, the general method of allocating allowances, and the availability of unlimited allowance banking as features which, according to them, undermine the stringency of the Texas SO_2 Trading Program.

EPA proposes to reaffirm its finding that the current Texas SO_2 Trading Program budget, in general, compares favorably in stringency to the CSAPR SO_2 trading program. Further, certain features of the Texas SO_2 Trading Program that were raised as concerns by commenters, such as allocations to retired units and use of allowance banking, are consistent with elements of the CSAPR trading programs. However, EPA recognizes that the current Texas SO_2 Trading Program, unlike CSAPR, does not impose an ''assurance level''—a total level of annual emissions above which units in the program would be penalized with a higher allowance surrender ratio (*i.e.,* a three-to-one rate) than the one-to-one ratio that applies to emissions below the assurance level. In EPA's analysis summarized above, EPA relied on the number of allowances allocated annually to indicate ''average'' annual emission levels. This analysis did not account for the variability in emissions due to the availability of banking or the build-up of allowances through allocations to retired units. Although these features are available to sources participating in the CSAPR programs, their effect on emissions in

[10] For more information on assurance levels in the CSAPR program, see U.S. EPA, Cross-State Air Pollution Rule (CSAPR) Fact Sheet—Assurance Provisions, available at *https://www.epa.gov/sites/production/files/2016-05/documents/fact_sheet_assurance_provisions_0.pdf* and in the docket for this action.

[11] *See* 83 FR at 43594–95 (citing 77 FR 33642 (June 7, 2012)).

[12] *See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA–HQ–OAR–2011–0729–0014 (December 2011), available in the docket for this action, at table 2–4.

[13] *See* Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets, Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012), available in the docket for this action.

[14] 83 FR at 43595.

[15] *Id.* at 43598.

[16] *Id.* at 43602.

that program is significantly constrained by the program's assurance provisions.

Although assurance levels in the CSAPR program were, as discussed above, originally implemented to meet requirements relevant to interstate transport under the good neighbor provision, this feature of the program was also relevant to the BART-alternative analysis for CSAPR because the presence of the three-for-one penalty provision established a practical upper bound on each state's emissions in each year of the program. This informed the level of emissions EPA could project with confidence under the CSAPR program when determining whether it could serve as a BART alternative. EPA recognizes that, in the absence of an assurance level for the Texas SO_2 Trading Program, there are no analogous means of guaranteeing that emissions would remain below a certain amount on an annual basis. The resulting growth in the number of allowances available for use in future years, without some constraint on annual emissions, could in theory impact the stringency of the program in terms of annual emissions for purposes of the BART-alternative analysis.

Therefore, EPA is proposing to add an assurance level to the Texas SO_2 Trading Program. EPA is proposing to set the assurance level using the same methodology applied in the original CSAPR rulemaking.[17] There, for each state covered by a given CSAPR program, EPA analyzed the historical year-to-year variability in the total annual quantity of fossil fuel consumed to generate electricity in the state. From this analysis, EPA developed for each state a statistical percentage measure representing, at a 95% confidence level, the maximum expected one-year deviation from average annual fossil fuel consumption for electricity generation. EPA used the highest of these state-specific statistical percentage measures for any state covered by a given CSAPR program to define ''variability limits'' for all the states covered by the program, where each state's variability limit was computed as that specific state's emissions budget multiplied by the highest of the state-specific statistical percentage measures for all the states in the program. EPA proposes here to set the assurance level for the Texas SO_2 Trading Program by relying on the same analysis and methodology that were used to set assurance levels in the original CSAPR rulemaking. This approach maintains consistency with the methodology used for the CSAPR programs while accounting for the fact that the Texas SO_2 Trading Program is intrastate-only (*i.e.,* does not permit interstate trading). On a state-specific basis for Texas, EPA determined in the CSAPR rulemaking that the statistical percentage measure representing the maximum expected one-year deviation from the state's average annual fossil fuel consumption for electricity generation was seven percent.[18] Applying that same percentage to the current Texas SO_2 Trading Program budget, EPA proposes to set the variability limit for Texas at 16,688 tons, which is seven percent of the trading budget of 238,393 tons. The proposed assurance level is the sum of the budget and the variability limit, or 255,081 tons. EPA proposes to amend the Texas SO_2 Trading Program's regulations to impose a penalty surrender ratio of three allowances for each ton of emissions in any year in excess of the 255,081-ton assurance level, and to impose the penalty proportionately to emissions from those groups of sources represented by a common designated representative that emit in excess of the groups' annual allocations of allowances. These requirements are in nearly all respects identical to the CSAPR program's assurance provisions. The specific amendments to the regulatory text are described in more detail below.

In addition to being consistent with the original CSAPR methodology for setting assurance levels, EPA also believes that an assurance level set at 255,081 is appropriate for the Texas SO_2 Trading Program because, if finalized, it will provide further support for our October 2017 finding that the Texas SO_2 Trading Program will result in SO_2 emission levels from Texas EGUs that are similar to or less than the emission levels from Texas EGUs that would have been realized from participation in the SO_2 trading program under CSAPR. At an assurance level of 255,081 tons of emissions annually, EPA has high confidence that emissions will be below the amount assumed in the BART-alternative sensitivity analysis utilized for the 2012 CSAPR-better-than-BART determination (*i.e.,* 317,100 tons), and thus visibility levels at Class I areas impacted by sources in Texas are anticipated to be at least as good as the levels projected in the 2012 analysis that assumed Texas would be in the larger CSAPR SO_2 trading program.[19] In reaching that conclusion, EPA includes in its analysis a reasonable estimate of projected emissions from units that would have been in the CSAPR program, but are not in the Texas SO_2 Trading Program. EPA proposes to use a more conservative (*i.e.,* higher) estimate of these emissions than in its August 2018 proposal. We propose to assume that these units will emit 35,000 tons of SO_2 annually based on a maximum annual emission level of 34,129 tons over the past five years (2014–2018) and considering that several of these units have recently shut down or have been announced for shutdown in the near future.[20] Adding that amount to the assurance level of 255,081 tons yields 290,081 tons. Assuming this figure represents a firm upper bound on annual SO_2 emissions from the relevant EGUs in Texas, this is less than the 317,100 ton figure EPA had demonstrated was acceptable in the original 2012 CSAPR analysis, as discussed above and in the August 2018 proposal.[21] We note that, as demonstrated in Table 1, SO_2 emissions from power plants in Texas are currently well below the Texas SO_2 Trading Program budget of 238,293 tons (as well as the proposed assurance level of 255,081 tons) and are anticipated to continue to decrease due to the low cost of natural gas and increasing renewable energy production.[22]

[17] *See* Power Sector Variability Final Rule TSD (July 2011), available at *https://www.epa.gov/csapr/power-sector-variability-final-rule-tsd* and in the docket for this action.

[18] *Id.*

[19] Two organizations have filed a petition for reconsideration of EPA's September 29, 2017 determination that CSAPR continues to satisfy the BART-alternative analysis under 40 CFR 51.308(e)(4) notwithstanding certain changes to the geographic scope of the program, including the removal of Texas from the CSAPR program for annual SO_2 and NOx emissions. *See* Sierra Club and National Parks Conservation Association, Petition for Partial Reconsideration of Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas, 82 FR 45481 (Sept. 29, 2017); EPA–HQ–OAR–2016–0598; FRL09968–46–OAR (dated Nov. 28, 2017). EPA is not proposing to address that determination through this action, and EPA is not addressing or revisiting the larger reaffirmation of the BART-alternative analysis for CSAPR at issue in that separate action taken in September 2017. EPA intends to take action at a later date responding to the petition for reconsideration in that matter.

[20] *See* ''Texas EGU SO_2 emissions, 2014–2018.xlsx'', available in the docket for this action. Sandow Station units 5A and 5B have been permanently retired. AEP has announced retirement of Oklaunion by September 2020. Gibbons Creek is currently not operating although it has not been officially retired.

[21] *See* ''Sensitivity Analysis Accounting for Increases—EPA–HQ–OAR–2011–0729–0323'' available in the docket for this action.

[22] *http://www.ercot.com/content/wcm/lists/144927/2018_LTSA_Report.pdf.*

TABLE 1—RECENT SO_2 EMISSIONS TRENDS IN TEXAS

[Tons]

	2014	2015	2016	2017	2018
Texas total EGU emissions	343,425	260,138	245,799	275,993	211,025
Participating sources' emissions	309,296	236,754	218,291	245,870	179,628
Non-participating sources' emissions	34,129	23,384	27,509	30,124	31,397

EPA also notes that the addition of an assurance level guaranteeing that SO_2 emissions can be expected to remain below a certain level each year has the effect of also addressing a number of other specific concerns about the Texas SO_2 Trading Program raised by commenters. In particular, to the extent that commenters claimed the program would be inadequately stringent due to the allowance allocation methodology, including allocations to retired units, or due to the Supplemental Allowance Pool or allowance banking, these concerns are effectively rendered moot by the addition of the assurance level. This is because when a mass-based trading program includes a ''cap'' on overall annual emissions, as the Texas SO_2 Trading Program would with the addition of the proposed assurance provisions, that overall ''cap'' on emissions set by the program (here, the assurance level) effectively determines the stringency of the program in each year. How allowances to emit are allocated annually within that overall cap, and whether allowances may be banked across years by certain market participants, will not impact the annual stringency of the program as a whole. Allocations to retired units and the availability of banking are important to ensure market stability, avoid perverse incentives, and potentially aid in sources' operational planning.[23] With the addition of an assurance level, the potential risk of an undue relaxation of the annual stringency in the program is minimized, because sources will remain strongly incentivized to keep annual emissions below the level at which the three-for-one surrender penalty is imposed. The effectiveness of assurance levels in guaranteeing the stringency of trading programs has been borne out in CSAPR, where no state's sources' emissions have exceeded a state's assurance level to-date.[24]

EPA requests comment on its proposal to add assurance provisions to the Texas SO_2 Trading Program. EPA also requests comment on its proposal to set the assurance level at 255,081 tons. The specific mechanics for the addition of this feature to the program are discussed in more detail below.

EPA proposes to make the assurance level effective beginning with the 2021 compliance period and for each period thereafter. The proposed assurance provisions would be implemented through the addition of new provisions at multiple locations in the Texas SO_2 Trading Program regulations at 40 CFR part 97, subpart FFFFF (40 CFR 97.901 through 97.935). In § 97.902, new definitions of several terms used in the assurance provisions (''assurance account,'' ''common designated representative,'' ''common designated representative's assurance level,'' and ''common designated representative's share'') would be added. New § 97.906(c)(2) and (c)(3)(ii) would set forth the central requirement of the assurance provisions—namely, that if SO_2 emissions from all covered sources in 2021 or any subsequent year collectively exceed the program's assurance level, then the owners and operators of the groups of sources determined to be responsible for the collective exceedance would be required to surrender allowances totaling twice the amount of the exceedance by a specified deadline, in addition to the allowances surrendered to account for the sources' total emissions. New § 97.910(b) and (c) would establish the variability limit that would be added to the trading program budget to determine the amount of the assurance level. New § 97.920(b) would provide for the establishment of assurance accounts, when appropriate, to hold the additional allowances to be surrendered. New § 97.925 would set forth additional procedures for EPA's administration of and sources' compliance with the assurance provisions.

Besides the addition of the new provisions just described, in §§ 97.906 and 97.920, several existing paragraphs would be renumbered and internal cross-references would be updated to reflect the added and renumbered paragraphs. Finally, revisions would be made to existing language at §§ 97.902 (definitions of ''general account'' and ''Texas SO_2 Trading Program allowance deduction''), 97.906(b)(2), 97.913(c), 97.926(b), 97.928(b), and renumbered 97.906(c)(4)(ii) to integrate the new assurance provisions with various existing provisions of the Texas program regulations.

The language of the proposed revisions to the Texas SO_2 Trading Program regulations would generally parallel the analogous language from the CSAPR regulations at 40 CFR part 97, subparts AAAAA through EEEEE, streamlined to reflect the Texas program's narrower applicability (*i.e.,* specific units located only in Texas, excluding any new units built either in Texas or in Indian country within Texas' borders). The only substantive differences from the analogous CSAPR assurance provisions concern the approach used to impute allocation amounts—for use in apportioning responsibility for any collective exceedance of the assurance level—to any units that do not receive actual allowance allocations from the trading program budget. Under CSAPR, the only units potentially in this situation are new units that do not receive allowance allocations from the CSAPR new unit set-asides, and the CSAPR regulations include a methodology for computing unit-specific imputed allocation amounts based on several data elements relating to the new units' design and potential operation.[25] In contrast, under the Texas SO_2 Trading Program, the only units potentially in this situation would be existing units that have ceased operation for an extended period, thereby losing their allocations from the trading budget under § 97.911(a), and that subsequently resume operation.[26]

[23] *See* CSAPR Update Final Rule, 81 FR 74506, 74559, 74566 (Oct. 26, 2016) (discussing rationales for these features in the context of the CSAPR Update ozone season NO_X trading program).

[24] *See* 2017 and 2018 CSAPR Budgets Emissions and Assurance Levels Spreadsheets, *available at* U.S. EPA, CSAPR Assurance Provision, *https://www.epa.gov/csapr/csapr-assurance-provision.* Copies of the spreadsheets, fact sheet, and web page are also provided in the docket for this action.

[25] *See, e.g.,* paragraph (3) of the definition of ''common designated representative's share'' at 40 CFR 97.702.

[26] Although the owners and operators of a unit in this situation might receive an allocation of allowances from the Supplemental Allowance Pool under § 97.912 based in part on the unit's emissions following resumption of operations, under the Texas program assurance provisions as proposed, any allocations of allowances from the Supplemental Allowance Pool would not be

Because the Texas SO_2 Trading Program regulations already identify the unit-specific allowance allocations that these units would formerly have received from the trading budget, the proposed Texas SO_2 Trading Program assurance provisions would use these previously established amounts for purposes of assurance provision calculations instead of requiring new imputed allocation amounts to be computed according to the more complex methodology in the CSAPR assurance provisions. The simpler approach proposed for the Texas SO_2 Trading Program assurance provisions appears at paragraph (2) of the proposed new definition of ''common designated representative's assurance level'' in § 97.902.

The simpler approach we are proposing for determining any imputed allocation amounts allows for some additional simplifications elsewhere in the proposed Texas SO_2 Trading Program assurance provisions. The CSAPR assurance provisions include regulatory text addressing the submission of data required to compute the imputed allocation amounts and the consequences of appeals relating to EPA's use of the data; the CSAPR provisions also call for issuance of an initial notice in advance of the required data submissions. Because under the proposed Texas SO_2 Trading Program assurance provisions the specific imputed allocation amounts would already be stated in the regulations, analogous provisions addressing data submissions and appeals are unnecessary and the contents of the initial notice can be consolidated into a later notice. Consequently, the corresponding paragraphs of the proposed Texas SO_2 Trading Program assurance provisions at proposed new § 97.925(b)(1)(ii), (b)(2)(i), and (b)(6)(ii) would contain no regulatory language and instead appear as ''reserved.''

2. Revision of Supplemental Allowance Pool Allocation Provisions

Section 97.912 of the existing Texas SO_2 Trading Program regulations establishes how allowances are allocated from the Supplemental Allowance Pool to sources (collections of participating units at a facility) that have reported total emissions for that control period exceeding the total amounts of allowances allocated to the participating units at the source for that control period (before any allocation from the Supplemental Allowance Pool). While all other sources required to participate in the trading program have flexibility to transfer allowances among multiple participating units under the same owner/operator when planning operations, Coleto Creek consists of only one coal-fired unit, and at the time of our October 2017 FIP, was the only coal-fired unit in Texas owned and operated by Dynegy. To provide this source additional flexibility, under the current program, Coleto Creek is allocated its maximum supplemental allocation from the Supplemental Allowance Pool as long as there are sufficient allowances in the Supplemental Allowance Pool available for allocation, and its actual allocation will not be reduced in proportion with any reductions made to the supplemental allocations to other sources. In our August 2018 proposal, we noted that Dynegy has merged with Vistra, which owns other units that are subject to the trading program. In the August 2018 proposal, we solicited comment on eliminating this additional flexibility for Coleto Creek in light of the recent change in ownership, and we received no adverse comments on such a change. In this SNPRM, we propose to make this change to the regulations.

Some commenters on the August 2018 proposal supported an analogous further change to the methodology for allocating allowances from the Supplemental Allowance Pool. These commenters observed that any owner with multiple sources has the ability to use surplus allowances allocated to one source to cover emissions from its other sources that exceed those other sources' base allowance allocations. Based on this observation, the commenters expressed the view that it would be more equitable to make allocations from the Supplemental Allowance Pool in proportion to each owner's total emissions in excess of the owner's total base allowance allocations instead of in proportion to each individual source's emissions in excess of the individual source's base allowance allocation. EPA agrees that this change would be equitable and notes that it would also be consistent with the rationale for eliminating the special flexibility in the existing regulations for Coleto Creek. Accordingly, EPA proposes to amend the Supplemental Allowance Pool allocation provisions to reflect this further change in the allocation methodology.

The proposed modifications to the methodology for allocating allowances from the Supplemental Allowance Pool would be implemented through several revisions to §§ 97.911 and 97.912. In § 97.912, paragraph (a) would be edited to limit applicability of the current allocation methodology to the 2019 and 2020 control periods, and a new paragraph (b) would be added setting forth the revised allocation methodology proposed for the control periods in 2021 and subsequent years. Two existing paragraphs of the section would be renumbered to accommodate the new paragraph (b), and internal cross-references would be updated to reflect the renumbering and to integrate the provisions of the revised allocation methodology with other existing provisions.

Proposed new § 97.912(b)(1) of the revised allocation methodology sets forth a procedure for assigning units into groups under common ownership called ''affiliated ownership groups.'' Under the proposed procedure, the group assignments would remain constant unless and until revised by EPA to reflect an ownership transfer. The proposed initial group assignments for all covered units are specified in a proposed new column that would be added to the existing allowance allocation table in § 97.911(a)(1).

Finally, consistent with the existing language in renumbered § 97.912(d) capping the number of allowances that can be allocated from the Supplemental Allowance Pool for any given control period, non-substantive revisions to §§ 97.911(a)(2) and (c)(5) would clarify that allowances from the trading budget that are transferred to the Supplemental Allowance Pool are not necessarily ''allocated under'' § 97.912, but instead are made available for ''potential allocation in accordance with'' § 97.912.

EPA requests comment on the proposed revisions to the Supplemental Allowance Pool allocation provisions.

3. Termination of Opt-In Provisions

Under § 97.904(b) of the existing Texas SO_2 Trading Program regulations, the EPA provided an opportunity for any other unit in the State of Texas that was previously subject to the CSAPR SO_2 Group 2 Trading Program and would have received an allowance allocation under that program to opt into the Texas SO_2 Trading Program. Under § 97.911(b), a unit that opts into the Texas SO_2 Trading Program would receive the same allowance allocation that it would have received under the CSAPR SO_2 Group 2 Trading Program. These allowance allocations would be in addition to the allocations to other units from the Texas SO_2 Trading Program budget and would therefore increase the total number of allowances available under the program. As of the date of this supplemental proposal, no source has notified EPA of intent to opt into the Texas SO_2 Trading Program.

considered when apportioning responsibility for a collective exceedance of the assurance level.

A commenter on the August 2018 proposal asserted that the opt-in provision weakened the functional equivalence of the Texas SO_2 Trading Program to CSAPR. The commenter cited EPA's determination not to include opt-in provisions in the CSAPR trading programs on the basis that opt-in provisions would undermine achievement of the CSAPR program's emission reduction objectives. The commenter also cited EPA's discussion of the reasons for this determination, including the difficulty of distinguishing new emission reductions from reductions that opt-in sources would have made anyway, and the consequent likelihood that the amounts of allowances allocated to the sources would exceed their starting emissions levels. The allocations to the sources opting in would thus introduce ''extra'' allowances into the CSAPR trading programs, increasing the quantity of allowances available to be traded to other sources and thereby decreasing the programs' stringency.[27] EPA believes that these considerations about potentially introducing ''extra'' allowances also apply to the current opt-in provisions in the Texas SO_2 Trading Program. Therefore, consistent with this supplemental proposal's overall objective of strengthening our finding that the Texas SO_2 Trading Program will result in SO_2 emission levels from Texas EGUs that are similar to or less than the emission levels from Texas EGUs that would have been realized from participation in the SO_2 trading program under CSAPR, EPA proposes to terminate the opt-in provisions in the Texas SO_2 Trading Program.

EPA requests comment on the proposed termination of the opt-in provisions. EPA also solicits comment as to what other relevant provisions in the Texas SO_2 Trading Program may offset the expressed concerns with the opt-in provisions.

The proposed termination of the opt-in provisions would be implemented through revisions in three locations. In § 97.904(b)(2), revised language would provide that the opportunity to participate in the Texas SO_2 Trading Program by opting in is available only for the 2019 and 2020 control periods. Revisions to §§ 97.911(b) and 97.921(d) would similarly provide that allowance allocations to opt-in units could be made and recorded only for the 2019 and 2020 control periods.

4. Revision of Allowance Recordation Provisions

Under § 97.921(a) of the existing Texas SO_2 Trading Program regulations, ''[t]he Administrator may delay recordation of Texas SO_2 Trading Program allowances for the specified control periods if the State of Texas submits a SIP revision before the recordation deadline.'' Similarly, under § 97.921(b), ''[t]he Administrator may delay recordation of the Texas SO_2 Trading Program allowances for the applicable control periods if the State of Texas submits a SIP revision by May 1 of the year of the applicable recordation deadline under this paragraph.'' In this SNPRM, we are proposing to amend the language in the recordation provisions such that the Administrator can delay recordation in the event that Texas submits a SIP revision *and EPA takes final action to approve it.* These revisions are necessary to ensure that the program remains fully operational unless it is replaced by a SIP revision that is approved by EPA as meeting the SO_2 BART requirements for the covered units.

The proposed amendment to condition any exceptions to scheduled allowance recordation activities on EPA's approval, rather than Texas' submission, of a SIP revision would be implemented through revisions to three paragraphs of § 97.921. In § 97.921(a), the existing language providing for a possible delay of recordation activities scheduled for November 1, 2018, would be deleted without replacement; the language is moot because the recordation date has already passed. In § 97.921(b), which governs future recordation of allowances allocated from the trading budget under § 97.911(a), the existing language would be revised to provide that future recordation activities will take place as scheduled unless provided otherwise in EPA's approval of a SIP revision replacing the provisions of subpart FFFFF. The same revised condition would also be added to § 97.921(c), which governs future recordation of allowances allocated from the Supplemental Allowance Pool under § 97.912.

EPA requests comment on the proposed revisions to the allowance recordation provisions.

B. Interstate Visibility Transport

In our August 2018 proposal, we proposed to affirm that Texas' participation in CSAPR to satisfy NOx BART and the Texas SO_2 Trading Program fully addresses Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24-hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2.[28] The basis of this proposed affirmation was our determination in the October 2017 FIP that the regional haze measures in place for Texas are adequate to ensure that emissions from the State do not interfere with measures to protect visibility in nearby states because the emission reductions are consistent with the level of emissions reductions relied upon by other states during consultation and when setting their reasonable progress goals. As discussed in our August 2018 proposal, the 2009 Texas Regional Haze SIP relied on CAIR to meet SO_2 and NO_X BART requirements for EGUs. Under CAIR, Texas EGU sources were projected to emit approximately 350,000 tons of SO_2 annually. In today's SNPRM, EPA proposes to make four revisions to strengthen the Texas SO_2 Trading Program and increase its consistency with CSAPR, including the addition of an assurance level consistent with the 2012 CSAPR demonstration. As discussed elsewhere in this SNPRM, Texas EGU annual SO_2 emissions for sources covered by the trading program would be constrained by the assurance level of 255,081 tons. Including an estimated 35,000 tons per year of emissions from units not covered by the Texas SO_2 Trading Program yields 290,081 tons of SO_2, well below the 350,000-ton emissions projection for Texas sources under CAIR or the 317,100-ton emissions benchmark for Texas sources under CSAPR discussed in section III.A.1. Additionally, the October 2017 FIP relies on CSAPR as an alternative to EGU BART for NO_X, which exceeds the NO_X emission reductions from Texas relied upon by other states during consultation. Because the proposed revisions to the Texas SO_2 Trading Program in this SNPRM would make the program consistent with or below those emission levels relied upon by other states during consultation, we believe these revisions provide further support for our earlier finding that the BART alternatives in the October 2017 FIP result in emission reductions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility for the six identified NAAQS. We invite comment on how the proposed revisions in this SNPRM impact our August 2018 proposal to affirm our October 2017 determination regarding Texas' visibility transport

[27] *See generally* 76 FR at 48276.

[28] 83 FR at 43593, 43604, and 43605.

obligations with respect to the NAAQS identified above.

IV. Supplemental Proposed Action

In this SNPRM, EPA proposes to make four sets of amendments to the Texas SO_2 Trading Program: (1) The addition of assurance-level provisions; (2) revisions to the Supplemental Allowance Pool allocation provisions; (3) termination of the opt-in provisions; and (4) revision of the allowance recordation provisions. The proposed changes to the Texas SO_2 Trading Program would be implemented through revisions to the existing regulations at 40 CFR part 97, subpart FFFFF. A redline/strike-out document showing subpart FFFFF with the proposed revisions has been added to the docket for this proposed action.

In this proposed action we are only soliciting comment on the four proposed revisions to the Texas SO_2 Trading Program, and how those proposed changes impact our August 2018 proposal to affirm that (1) the Texas SO_2 Trading Program will result in SO_2 emission levels from Texas EGUs that are similar to or less than the emission levels from Texas EGUs that would have been realized from participation in the SO_2 trading program under CSAPR, and (2) Texas' interstate visibility transport obligations with respect to six NAAQS (listed in the preceding section) are satisfied. The EPA is not reopening the comment period on any other aspect of the August 2018 proposal. The EPA will not respond to comments received during the reopened comment period outside the above-defined scope. We will respond to all comments received on this SNPRM and our August 2018 proposal to affirm our October 2017 FIP in a single final rulemaking.

V. Statutory and Executive Order Reviews

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

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities for the Texas SO_2 Trading Program as part of the most recent information collection request renewal for the CSAPR trading programs and has assigned OMB control number 2060–0667. This proposed action would not change any information collection requirements for any entity affected underthe Texas SO_2 Trading Program.

D. Regulatory Flexibility Act

I certify that this proposed action will not have a significant impact on a substantial number of small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule does not impose any requirements or create impacts on small entities. This proposed action to modify a FIP action previously issued under Section 110 of the CAA will not create any new requirement with which small entities must comply. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.*, emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. We have therefore concluded that this proposed action will have no net regulatory burden for all directly regulated small entities.

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 does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It 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 rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks [29] applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the E.O. has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. This proposed action is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of SO_2, the proposed rule will have a beneficial effect on children's health by reducing air pollution.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This proposed action does not involve technical standards.

[29] 62 FR 19885 (Apr. 23, 1997).

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

The EPA believes that this proposed action does *not* have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). We have determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The proposed rule limits emissions of SO_2 from certain facilities in Texas.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available retrofit technology.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: November 1, 2019.

David Gray,

Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, Part 97 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

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

■ 1. The authority citation for Part 97 is revised to read as follows:

Authority: 42 U. S. C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

Subpart FFFFF—TEXAS SO_2 TRADING PROGRAM

■ 2. Section 97.902 is amended by:

■ a. In the definitions of ''Acid Rain Program'', ''Allowance Management System'', and ''Allowance Management System account'', capitalizing the first three words;

■ b. Adding in alphabetical order a definition of ''Assurance account'';

■ c. In the definition of ''authorized account representative'', capitalizing the word ''trading'' the first time it appears;

■ d. Adding in alphabetical order definitions of ''Common designated representative'', ''Common designated representative's assurance level'', and ''Common designated representative's share''; and

■ e. Revising the definitions of ''General account'' and ''Texas SO_2 Trading Program allowance deduction''.

The additions and revisions read as follows:

§ 97.902 Definitions.

* * * * *

Assurance account means an Allowance Management System account, established by the Administrator under § 97.925(b)(3) for certain owners and operators of a group of one or more Texas SO_2 Trading Program sources and units, in which are held Texas SO_2 Trading Program allowances available for use for a control period in a given year in complying with the Texas SO_2 Trading Program assurance provisions in accordance with §§ 97.906 and 97.925.

* * * * *

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 control period, the same natural person is authorized under §§ 97.913(a) and 97.915(a) as the designated representative for a group of one or more Texas SO_2 Trading Program sources and units.

Common designated representative's assurance level means, with regard to a specific common designated representative and control period in a given year for which the State assurance level is exceeded as described in § 97.906(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of Texas SO_2 Trading Program allowances allocated for such control period under § 97.911, or deemed to have been allocated under paragraph (2) of this definition, to the group of one or more Texas SO_2 Trading Program units having the common designated representative for such control period multiplied by the sum for such control period of the Texas SO_2 Trading Program budget under § 97.910(a)(1) and the variability limit under § 97.910(b) and divided by the sum of the total amount of Texas SO_2 Trading Program allowances allocated for such control period under § 97.911, or deemed to have been allocated under paragraph (2) of this definition, to all Texas SO_2 Trading Program units;

(2) Provided that, in the case of a Texas SO_2 Trading Program unit that operates during, but has no amount of Texas SO_2 Trading Program allowances allocated under § 97.911 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated the amount of Texas SO_2 Trading Program allowances shown for the unit in § 97.911(a)(1).

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and the total amount of SO_2 emissions from all Texas SO_2 Trading Program units during such control period, the total tonnage of SO_2 emissions during such control period from the group of one or more Texas SO_2 Trading Program units having the common designated representative for such control period.

* * * * *

General account means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

* * * * *

Texas SO_2 Trading Program allowance deduction or *deduct Texas SO_2 Trading Program allowances* means the permanent withdrawal of Texas SO_2 Trading Program allowances by the Administrator from a compliance account (*e.g.,* in order to account for compliance with the Texas SO_2 Trading Program emissions limitation) or from an assurance account (*e.g.,* in order to account for compliance with the assurance provisions under §§ 97.906 and 97.925).

* * * * *

§ 97.904 [Amended]

■ 3. Section 97.904 is amended in paragraph (b)(2) by removing the text ''Program, provided'' and adding in its place the text ''Program for the control periods in years before 2021, provided''.

■ 4. Section 97.906 is amended by:

■ a. In paragraph (b)(2), adding after the text ''emissions limitation'' the text ''and assurance provisions'';

■ b. Redesignating paragraphs (c)(2) through (6) as paragraphs (c)(3) through (7) and adding a new paragraph (c)(2);

■ c. Redesignating the text of newly redesignated paragraph (c)(3) after the paragraph heading as paragraph (c)(3)(i) and adding a new paragraph (c)(3)(ii);

■ d. In newly redesignated paragraph (c)(4)(ii), removing the text ''paragraph (c)(1)(ii)(A)'' and adding in its place the text ''paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii)''.

The additions read as follows:

§ 97.906 General provisions.

* * * * *

(c) * * *

(2) *Texas SO_2 Trading Program assurance provisions.* (i) If total SO_2 emissions during a control period in a given year from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources 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 SO_2 emissions during such control period exceeds the common designated representative's assurance level for such control period, shall hold (in the assurance account established for the owners and operators of such group) Texas SO_2 Trading Program allowances available for deduction for such control period under § 97.925(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.925(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such SO_2 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 for such control period, by which each common designated representative's share of such SO_2 emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the Texas SO_2 Trading Program 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 SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during a control period in a given year exceed the State assurance level if such total SO_2 emissions exceed the sum, for such control period, of the Texas SO_2 Trading Program budget under § 97.910(a)(1) and the variability limit under § 97.910(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during a control period exceed the State assurance level or if a common designated representative's share of total SO_2 emissions from the Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold Texas SO_2 Trading Program 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 Texas SO_2 Trading Program 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) * * *

(ii) A Texas SO_2 Trading Program unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on January 1, 2021 and for each control period thereafter.

* * * * *

■ 5. Section 97.910 is amended by:

■ a. Revising the section heading; and

■ b. Adding paragraphs (b) and (c).

The revision and additions read as follows:

§ 97.910 Texas SO_2 Trading Program budget, Supplemental Allowance Pool budget, and variability limit.

* * * * *

(b) The variability limit for the Texas SO_2 Trading Program budget for the control periods in 2021 and thereafter is 16,688 tons.

(c) The Texas SO_2 Trading Program budget in paragraph (a)(1) of this section does not include any tons in the Supplemental Allowance Pool budget in paragraph (a)(2) of this section or the variability limit in paragraph (b) of this section.

■ 6. Section 97.911 is amended by:

■ a. Revising paragraph (a)(1);

■ b. In paragraph (a)(2), removing the text ''allocated under the Texas Supplemental Allowance Pool under 40 CFR 97.912.'' and adding in its place the text ''transferred to the Texas Supplemental Allowance Pool for potential allocation in accordance with § 97.912.'';

■ c. In paragraph (b)(1), removing the text ''SO_2 allocation'' and adding in its place the text ''allocation'', and adding after the text ''each year'' the text ''before 2021''; and

■ d. In paragraph (c)(5), removing the text ''under 40 CFR 97.912.'' and adding in its place the text ''for potential allocation in accordance with § 97.912.''.

The revision reads as follows:

§ 97.911 Texas SO_2 Trading Program allowance allocations.

(a)(1) Except as provided in paragraph (a)(2) of this section, Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program budget will be allocated, for the control periods in 2019 and each year thereafter, as provided in Table 1 to this paragraph (a)(1):

TABLE 1 TO PARAGRAPH (a)(1)—TEXAS SO_2 TRADING PROGRAM ALLOCATIONS

Texas SO_2 trading program units	ORIS code	Texas SO_2 trading program allocation (tons)	Affiliated ownership group
Big Brown Unit 1	3497	8,473	Vistra Energy.
Big Brown Unit 2	3497	8,559	Vistra Energy.
Coleto Creek Unit 1	6178	9,057	Vistra Energy.
Fayette/Sam Seymour Unit 1	6179	7,979	Lower Colorado River Authority/City of Austin.
Fayette/Sam Seymour Unit 2	6179	8,019	Lower Colorado River Authority/City of Austin.

TABLE 1 TO PARAGRAPH (a)(1)—TEXAS SO_2 TRADING PROGRAM ALLOCATIONS—Continued

Texas SO_2 trading program units	ORIS code	Texas SO_2 trading program allocation (tons)	Affiliated ownership group
Graham Unit 2	3490	226	Vistra Energy.
H W Pirkey Power Plant Unit 1	7902	8,882	American Electric Power.
Harrington Unit 061B	6193	5,361	Xcel Energy.
Harrington Unit 062B	6193	5,255	Xcel Energy.
Harrington Unit 063B	6193	5,055	Xcel Energy.
JT Deely Unit 1	6181	6,170	City of San Antonio.
JT Deely Unit 2	6181	6,082	City of San Antonio.
Limestone Unit 1	298	12,081	NRG Energy.
Limestone Unit 2	298	12,293	NRG Energy.
Martin Lake Unit 1	6146	12,024	Vistra Energy.
Martin Lake Unit 2	6146	11,580	Vistra Energy.
Martin Lake Unit 3	6146	12,236	Vistra Energy.
Monticello Unit 1	6147	8,598	Vistra Energy.
Monticello Unit 2	6147	8,795	Vistra Energy.
Monticello Unit 3	6147	12,216	Vistra Energy.
Newman Unit 2	3456	1	El Paso Electric.
Newman Unit 3	3456	1	El Paso Electric.
Newman Unit 4	3456	2	El Paso Electric.
Sandow Unit 4	6648	8,370	Vistra Energy.
Sommers Unit 1	3611	55	City of San Antonio.
Sommers Unit 2	3611	7	City of San Antonio.
Stryker Unit ST2	3504	145	Vistra Energy.
Tolk Station Unit 171B	6194	6,900	Xcel Energy.
Tolk Station Unit 172B	6194	7,062	Xcel Energy.
WA Parish Unit WAP4	3470	3	NRG Energy.
WA Parish Unit WAP5	3470	9,580	NRG Energy.
WA Parish Unit WAP6	3470	8,900	NRG Energy.
WA Parish Unit WAP7	3470	7,653	NRG Energy.
Welsh Power Plant Unit 1	6139	6,496	American Electric Power.
Welsh Power Plant Unit 2	6139	7,050	American Electric Power.
Welsh Power Plant Unit 3	6139	7,208	American Electric Power.
Wilkes Unit 1	3478	14	American Electric Power.
Wilkes Unit 2	3478	2	American Electric Power.
Wilkes Unit 3	3478	3	American Electric Power.

* * * * *

■ 7. Section 97.912 is amended by:

■ a. In paragraph (a) introductory text, removing the text ''each control period in 2019 and thereafter,'' and adding in its place the text ''the control periods in 2019 and 2020,'';

■ b. In paragraph (a)(1), removing the text ''each subsequent February 15,'' and adding in its place the text ''February 15, 2021,'';

■ c. In paragraph (a)(3)(ii)(A), removing the text ''paragraph (b)'' and adding in its place the text ''paragraph (d)'';

■ d. In paragraph (a)(3)(ii)(B), removing the text ''paragraph (b)'' wherever it appears and adding in its place the text ''paragraph (d)'';

■ e. In paragraph (a)(3)(iii), removing the text ''paragraph (b)'' and adding in its place the text ''paragraph (d)'';

■ f. Redesignating paragraphs (a)(4) and (b) as paragraphs (c) and (d) and adding a new paragraph (b); and

■ g. In newly redesignated paragraph (d), adding after the text ''paragraph (a)(3)(iii)'' the text ''or (b)(4)(ii)''.

The addition reads as follows:

§ 97.912 Texas SO_2 Trading Program Supplemental Allowance Pool.

* * * * *

(b) For each control period in 2021 and thereafter, the Administrator will allocate Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program Supplemental Allowance Pool as follows:

(1) For each control period, the Administrator will assign each Texas SO_2 Trading Program unit to an affiliated ownership group reflecting the unit's ownership as of December 31 of the control period. The affiliated ownership group assignments for each control period will be as shown in § 97.911(a)(1) except that the Administrator will revise the assignments, based on the information required to be submitted in accordance with § 97.915(c) and any other information available to the Administrator, as necessary to reflect any ownership transfer resulting in a 50% or greater ownership share of a unit being held by a new owner that the Administrator determines is not affiliated with the previous holder of a 50% or greater ownership share of the unit.

(2) No later than February 15, 2022 and each subsequent February 15, the Administrator will review all the quarterly SO_2 emissions reports provided under § 97.934(d) for each Texas SO_2 Trading Program unit for the previous control period. The Administrator will identify each affiliated ownership group of Texas SO_2 Trading Program units as of December 31 of such control period for which the total amount of emissions reported for the units in the group for that control period exceeds the total amount of allowances allocated to the units in the group for that control period under § 97.911.

(3) For each affiliated ownership group of Texas SO_2 Trading Program units identified under paragraph (b)(2) of this section, the Administrator will calculate the amount by which the total amount of reported emissions for that control period exceeds the total amount

of allowances allocated for that control period under § 97.911.

(4)(i) The Administrator will allocate and record allowances from the Supplemental Allowance Pool as follows:

(A) If the total for all such affiliated ownership groups of the amounts calculated under paragraph (b)(3) of this section is less than or equal to the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section, then the Administrator will allocate and record in the compliance accounts for the sources at which the units in each such group are located a total amount of allowances from the Supplemental Allowance Pool equal to the amount calculated for the group under paragraph (b)(3) of this section.

(B) If the total for all such affiliated ownership groups of the amounts calculated under paragraph (b)(3) of this section is greater than the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section, then the Administrator will calculate each such group's allocation of allowances from the Supplemental Allowance Pool by dividing the amount calculated under paragraph (b)(3) of this section for the group by the sum of the amounts calculated under paragraph (b)(3) of this section for all such groups, then multiplying by the number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section and rounding to the nearest allowance. The Administrator will then record the calculated allocations of allowances in the applicable compliance accounts.

(C) When an affiliated ownership group receives an allocation of allowances under paragraph (b)(4)(i)(A) or (B) of this section, each unit in the group whose emissions during the control period for which allowances are being allocated exceed the amount of allowances allocated to the unit under § 97.911 will receive a share of the group's allocation. The Administrator will compute each such unit's share by dividing the amount of the unit's emissions during the control period exceeding the unit's allocation under § 97.911 by the sum for all such units of the amounts of the units' emissions during the control period exceeding the units' allocations under § 97.911, then multiplying by the group's allocation under paragraph (b)(4)(i)(A) or (B) of this section and rounding to the nearest allowance.

(ii) Any unallocated allowances remaining in the Supplemental Allowance Pool after the allocations determined under paragraph (b)(4)(i) of this section will be maintained in the Supplemental Allowance Pool. These allowances will be available for allocation by the Administrator in subsequent control periods to the extent consistent with paragraph (d) of this section.

* * * * *

■ 8. Section 97.913 is amended by revising paragraph (c) to read as follows:

§ 97.913 Authorization of designated representative and alternate designated representative.

* * * * *

(c) Except in this section, § 97.902, and §§ 97.914 through 97.918, 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.

■ 9. Section 97.920 is amended by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e) and adding a new paragraph (b);

■ c. In newly redesignated paragraph (c)(2)(i) introductory text, removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ d. In newly redesignated paragraph (c)(2)(ii), removing the text ''paragraph (b)(5)'' and adding in its place the text ''paragraph (c)(5)'';

■ e. In newly redesignated paragraphs (c)(3)(i) and (ii), removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ f. In newly redesignated paragraph (c)(4)(i), removing the text ''paragraph (b)(1)'' wherever it appears and adding in its place the text ''paragraph (c)(1)'';

■ g. In newly redesignated paragraph (c)(4)(ii), removing the text ''paragraph (b)(4)(i)'' and adding in its place text ''paragraph (c)(4)(i)'';

■ h. In newly redesignated paragraph (c)(5)(iii) introductory text and paragraph (c)(5)(iii)(C), removing the text ''paragraph (b)(5)(i)'' and adding in its place the text ''paragraph (c)(5)(i)'';

■ i. In newly redesignated paragraph (c)(5)(iii)(D), removing the text ''97.920(b)(5)(iv)'' and adding in its place the text ''97.920(c)(5)(iv)'';

■ j. In newly redesignated paragraph (c)(5)(iii)(E), removing the text ''97.920(b)(5)(iv),'' and adding in its place the text ''97.920(c)(5)(iv),'', and removing the text ''97.920(b)(5)'' and adding in its place the text ''97.920(c)(5)'';

■ k. In newly redesignated paragraph (c)(5)(iv), removing the text ''paragraph (b)(5)(iii)'' and adding in its place the text ''paragraph (c)(5)(iii)'';

■ l. In newly redesignated paragraph (c)(5)(v), removing the text ''paragraph (b)(5)(iii)(D)'' and adding in its place the text ''paragraph (c)(5)(iii)(D)'', and removing the text ''paragraph (b)(5)(iv)'' and adding in its place the text ''paragraph (c)(5)(iv)'';

■ m. In newly redesignated paragraph (d), removing the text ''paragraphs (a) and (b)'' and adding in its place the text ''paragraphs (a), (b), and (c)''; and

■ n. In newly redesignated paragraph (e), removing the text ''paragraphs (b)(2)(ii) and (b)(5)'' and adding in its place the text ''paragraphs (c)(2)(ii) and (c)(5)''.

The revision and addition read as follows:

§ 97.920 Establishment of compliance accounts, assurance accounts, and general accounts.

* * * * *

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.925(b)(3).

* * * * *

■ 10. Section 97.921 is amended by:

■ a. In paragraph (a), removing the second sentence;

■ b. Revising paragraphs (b) and (c); and

■ c. In paragraph (d), removing the text ''July 1 of each year thereafter,'' and adding in its place the text ''July 1, 2020,''.

The revision reads as follows:

§ 97.921 Recordation of Texas SO_2 Trading Program allowance allocations.

* * * * *

(b) By July 1, 2019, 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 fourth 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, 2020, and February 15 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 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.

* * * * *

■ 11. Section 97.925 is added to read as follows:

§ 97.925 Compliance with Texas SO_2 Trading Program assurance provisions.

(a) *Availability for deduction.* Texas SO_2 Trading Program allowances are available to be deducted for compliance with the Texas SO_2 Trading Program assurance provisions for a control period in a given year by the owners and operators of a group of one or more Texas SO_2 Trading Program sources and units only if the Texas SO_2 Trading Program allowances:

(1) Were allocated 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 Texas SO_2 Trading Program sources and units 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 Texas SO_2 Trading Program allowances available under paragraph (a) of this section for compliance with the Texas SO_2 Trading Program assurance provisions for a control period in a given year in accordance with the following procedures:

(1) By June 1, 2022 and June 1 of each year thereafter, the Administrator will:

(i) Calculate the total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total SO_2 emissions exceed the State assurance level as described in § 97.906(c)(2)(iii).

(ii) [Reserved]

(2) If the calculations under paragraph (b)(1)(i) of this section indicate that the total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during such control period exceed the State assurance level as described in § 97.906(c)(2)(iii):

(i) [Reserved]

(ii) By August 1 immediately after the deadline for the calculations under paragraph (b)(1)(i) of this section, the Administrator will calculate, for such control period and each common designated representative for such control period for a group of one or more Texas SO_2 Trading Program sources and units, the common designated representative's share of the total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources, the common designated representative's assurance level, and the amount (if any) of Texas SO_2 Trading Program allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.906(c)(2)(i). By each such August 1, the Administrator will promulgate a notice of data availability of the results of the calculations under this paragraph and paragraph (b)(1)(i) of this section, including separate calculations of the SO_2 emissions from each Texas SO_2 Trading Program source.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice of data availability required in paragraph (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in the notice required under paragraph (b)(2)(ii) of this section are in accordance with § 97.906(c)(2)(iii), §§ 97.906(b) and 97.930 through 97.935, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.902, and the calculation formula in § 97.906(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, 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) 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 Texas SO_2 Trading Program sources and units having a common designated representative for such control period and as being required to hold Texas SO_2 Trading Program 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 Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units under paragraph (b)(3) of this section a total amount of Texas SO_2 Trading Program 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 and units 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 § 97.923, of Texas SO_2 Trading Program 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 Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units established under paragraph (b)(3) of this section, the amount of Texas SO_2 Trading Program allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources and units 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 Texas SO_2 Trading Program allowances that the owners and operators are required to hold in accordance with § 97.906(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 Texas SO_2 Trading Program allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.906(c)(2)(i) for such control period with regard to the Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units 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) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of Texas SO_2 Trading Program allowances that the owners and operators are required to hold for such control period with regard to the Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units involved—

(A) Where the amount of Texas SO_2 Trading Program 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 Texas SO_2 Trading Program allowances in the assurance account established by the Administrator for the appropriate Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units 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 Texas SO_2 Trading Program 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 Texas SO_2 Trading Program 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 Texas SO_2 Trading Program allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units under paragraph (b)(3) of this section, a total amount of the Texas SO_2 Trading Program allowances held in such assurance account equal to the amount of the decrease. If Texas SO_2 Trading Program allowances were transferred to such assurance account from more than one account, the amount of Texas SO_2 Trading Program allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of Texas SO_2 Trading Program allowances transferred to such assurance account for such control period from such transferor account.

(C) Each Texas SO_2 Trading Program allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the Texas SO_2 Trading Program assurance provisions for such control period must be a Texas SO_2 Trading Program 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.

§ 97.926 [Amended]

■ 12. Amend § 97.926 paragraph (b) by adding after the text ''§ 97.924,'' the text ''§ 97.925,''.

§ 97.928 [Amended]

■ 13. Amend § 97.928 paragraph (b) by removing the text ''a compliance account,'' and adding in its place the text ''a compliance account or an assurance account,''.

§ 97.931 [Amended]

■ 14. Amend § 97.931 paragraph (d)(3) introductory text by removing after the text ''is replaced by'' the text ''with''.

[FR Doc. 2019–24286 Filed 11–13–19; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; FCC 19–108]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission takes steps to streamline our rules and procedures to accelerate the successful conclusion of the Commission's 800 MHz band reconfiguration program, or rebanding. The document seeks comment on the proposed rule deletions.

DATES: Comments are due on or before December 16, 2019 and reply comments are due on or before December 30, 2019.

ADDRESSES: You may submit comments, identified by WT Docket No. 02–55, by any of the following methods:

- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WT Docket No. 02–55, FCC 19–108, released on October 28, 2019. The complete text of this document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

1. In the Notice of Proposed Rulemaking (*NPRM*), the Commission, recognizing that it has determined that Sprint did not reap an economic windfall from the spectrum award that Sprint received in exchange for undertaking the financial obligation to support 800 MHz rebanding, proposes eliminating the rule that requires an annual auditing of Sprint's rebanding expenditures by the 800 MHz Transition Administrator. The *NPRM* seeks comment on proposed procedures for eliminating the requirement that each rebanding agreement be reviewed and