



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9966-42-OAR]

Allocations of Cross-State Air Pollution Rule Allowances from New Unit Set-Asides for the 2017 Compliance Year

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR). EPA has completed final calculations for the first round of allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2017 control periods and has posted spreadsheets containing the calculations on EPA's website. The only change from the preliminary calculations is the elimination of allocations of CSAPR SO₂ Group 2 allowances to four units in Georgia that for purposes of the preliminary calculations were incorrectly identified as new units instead of existing units.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions

budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed “new” units, followed by the allocation to “existing” units of any allowances not allocated to new units.¹ In a NODA published in the *Federal Register* on June 21, 2017 (82 FR 28243), we provided notice of preliminary calculations for the first-round 2017 NUSA allowance allocations. We also described the process for submitting any objections to the preliminary calculations. This NODA concerns the final calculations for this round of 2017 NUSA allocations.

EPA received written objections from four parties in response to the June 21 NODA.² For the reasons discussed below, we have concluded that none of the written objections provides a valid basis for altering the preliminary calculations of NUSA allowance allocations.

The first written objection was submitted by a representative for a combustion turbine that commenced commercial operation in 2007 in simple cycle configuration and that in 2016 was modified to combined cycle configuration through the installation of additional equipment including a heat recovery steam generator, duct burners, and a steam turbine. According to the

¹ The procedures for annually allocating allowances from each NUSA to eligible units are set forth in the CSAPR regulations at 40 CFR 97.411(b) and 97.412 (CSAPR NO_x Annual Trading Program), 97.511(b) and 97.512 (CSAPR NO_x Ozone Season Group 1 Trading Program), 97.611(b) and 97.612 (CSAPR SO₂ Group 1 Trading Program), 97.711(b) and 97.712 (CSAPR SO₂ Group 2 Trading Program), and 97.811(b) and 97.812 (CSAPR NO_x Ozone Season Group 2 Trading Program).

² A fifth written objection was withdrawn prior to EPA’s drafting of this notice.

objection, the additional equipment should be treated for CSAPR purposes as a separate, new affected unit that is eligible for allocations of CSAPR NUSA allowances.³

EPA disagrees with this objection based primarily on our interpretation of the CSAPR definitions of “combustion turbine” and “unit.” The CSAPR definition of “combustion turbine” covers two possible equipment configurations – the equipment required for simple cycle operation, consisting of a compressor, combustor, and turbine, and the equipment required for combined cycle operation, consisting of the preceding equipment plus a heat recovery steam generator, duct burners (if any), and a steam turbine.⁴ The facility in question meets the CSAPR definition of “combustion turbine” both before and after the addition of the new equipment described above; the effect of adding the new equipment is simply to cause the facility to meet a different provision of the definition. Nothing in the definition suggests that the addition of equipment to a given facility that causes a different provision of the definition to apply should be interpreted as splitting that facility into two separate combustion turbines, as the objection claims. Moreover, our interpretation that the facility in question remains a single combustion turbine is strongly supported by the CSAPR definition of “unit,” which encompasses a “combustion turbine” and further states in relevant part that “[a] unit that undergoes a physical

³ The objection seeks NUSA allocations of CSAPR NO_x Annual, CSAPR SO₂ Group 2, and CSAPR NO_x Ozone Season Group 2 allowances. However, the facility is located in Kansas, and allocations of 2017 CSAPR NO_x Annual allowances to units in Kansas are governed by a SIP revision rather than by the allocation procedures in the federal CSAPR regulations. 81 FR 42256 (June 29, 2016). EPA therefore addresses the objection only as it relates to allowances for the remaining two programs.

⁴ The full definition states: “*Combustion turbine* means an enclosed device comprising: (1) If the device is simple cycle, a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and (2) If the device is combined cycle, the equipment described in paragraph (1) of this definition and any associated duct burner, heat recovery steam generator, and steam turbine.” 40 CFR 97.702, 97.802.

change ... shall continue to be treated as the same unit.”⁵ The objection asserts that this definition means that only the original equipment is “the same unit,” while the additional equipment comprising the “physical change” is a separate unit, but we disagree. To the contrary, we believe a plain reading of the definition indicates that a unit to which a physical change has been made remains “the same unit” but with a physical change.

In summary, we interpret the CSAPR regulations as providing that the facility in question remains the same, single “combustion turbine” for CSAPR purposes after the addition of the new equipment as it was before the addition of the new equipment.⁶ Because we do not agree that the additional equipment should be treated as a separate, new affected unit for CSAPR purposes, it is unnecessary to address the portions of the objection concerning the quantities of NUSA allowances for which such a new unit theoretically would be eligible.

The second and third written objections were submitted by representatives of two facilities whose units are treated as new units for purposes of the original CSAPR trading programs but are treated as existing units for purposes of the more recent CSAPR NO_x Ozone Season Group 2 trading program. The units in question commenced commercial operation in

⁵ The full definition states: “*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.” 40 CFR 97.702, 97.802.

⁶ EPA further notes that the facility’s representatives have not complied with multiple CSAPR requirements that would apply if the additional equipment in fact did constitute a separate, new affected unit for CSAPR purposes. For example, they have not submitted a certificate of representation identifying the additional equipment as a new affected unit, *see* 40 CFR 97.415(d), 97.715(d), 97.815(d), have not submitted a monitoring plan identifying such a new unit (or identifying the new stack as a common stack serving multiple units), *see* §§ 97.434(b), 97.734(b), 97.834(b), and have not reported any separate hourly emissions or heat input data for such a new unit, *see* §§ 97.434(d), 97.734(d), 97.834(d).

2011 and 2012 and their owners have identified them as affected by CSAPR. In the CSAPR rulemaking finalized in 2011 that established the original four CSAPR trading programs, EPA determined that all likely affected units that commenced commercial operation prior to January 1, 2010 should be treated as existing units for purposes of these four trading programs.⁷ In the CSAPR Update rulemaking finalized in 2016 that established the CSAPR NO_x Ozone Season Group 2 Trading Program, we determined that all likely affected units that commenced commercial operation prior to January 1, 2015 should be treated as existing units for purposes of this trading program.⁸ Under these criteria, the units in question are new units for purposes of the original four CSAPR trading programs and existing units for purposes of the CSAPR NO_x Ozone Season Group 2 Trading Program. The facilities' representatives object to the units' classification as existing units under this last trading program and request that the units be classified instead as new units eligible for allocations of NUSA allowances under this program.

As noted above, allocations of NUSA allowances under the CSAPR NO_x Ozone Season Group 2 Trading Program are governed by 40 CFR 97.811(b) and 97.812. The regulations provide a detailed set of procedures that EPA must follow when allocating NUSA allowances, including procedures for identifying the units eligible for each round of NUSA allocations for each control period. Under § 97.811(b)(1)(ii)(B), objections to our preliminary calculations of first-round allocations “shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 2 units) are in accordance with § 97.812(a)(2) through (7) and (12) and §§ 97.830 through 97.835” – in other words, whether the calculations (including identification of eligible units) have been performed in accordance with

⁷ 76 FR 48208, 48288-91 (August 8, 2011).

⁸ 81 FR 74504, 74563-66 (October 26, 2016).

the detailed procedures set forth in the regulations. The objections to the June 21 NODA fall outside this narrow scope. The January 1, 2015 cutoff date used to determine whether a particular unit is an existing unit for purposes of this trading program was established as part of the CSAPR Update rulemaking and can be revised only through another rulemaking. The process of allocating NUSA allowances is strictly an administrative process that implements regulations already in effect, not a rulemaking process in which regulations may be revised.

EPA has confirmed that the units in question are not eligible to receive allocations of NUSA allowances under the regulations for the CSAPR NO_x Ozone Season Group 2 Trading Program. Under § 97.812(a)(3), first-round allocations are determined for “each CSAPR NO_x Ozone Season Group 2 unit described in paragraph (a)(1) of this section” – i.e., § 97.812(a)(1). This paragraph of the regulations identifies three categories of units eligible for first-round allocations: first, units that have not been allocated allowances as existing units pursuant to § 97.811(a)(1); second, units that have been allocated allowances as existing units from a given state’s budget for a given control period but have lost those allocations under the trading program’s correction provisions (because the units either are not located in that state or are not subject to the program at the start of that control period); and third, units that have ceased operation for a sufficient length of time to lose their allocations as existing units and have subsequently resumed operation.⁹ As discussed above, the units in question meet the criteria established in the CSAPR Update rulemaking to be considered existing units for purposes of the CSAPR NO_x Ozone Season Group 2 Trading Program, and the units accordingly have been allocated allowances as existing units pursuant to § 97.811(a)(1). The units do not fall within one of the categories of units eligible for NUSA allocations as set forth in § 97.812(a)(1), and the

⁹ See § 97.812(a)(1)(i), (ii), and (iii), respectively.

regulations do not provide us with the authority either to grant exceptions for individual units or to identify additional categories of eligible units beyond those set forth in § 97.812(a)(1).

As an alternative to having the facility's units reclassified as new units for purposes of the CSAPR NO_x Ozone Season Group 2 Trading Program, the third written objection also seeks modifications to the data used to compute the units' allocations of allowances as *existing* units under that program. However, like the January 1, 2015 cutoff date, EPA's determinations of which data should be used to determine allowance allocations to existing units were made in the CSAPR Update rulemaking¹⁰ and can be revised only through another rulemaking, not through the administrative process of allocating NUSA allowances. The objection is therefore outside the scope of the June 21 NODA.

Finally, the fourth written objection seeks modifications to the total amount of the NUSA for Oklahoma under the CSAPR NO_x Ozone Season Group 2 Trading Program. Again, EPA's determinations regarding the NUSA total amounts were made in the CSAPR Update rulemaking; further, the actual amounts are codified in the CSAPR regulations.¹¹ The total amount of the NUSA for Oklahoma can be revised only through another rulemaking, not through the administrative process of allocating NUSA allowances, so the objection is outside the scope of the June 21 NODA.

In addition to the written objections discussed above, EPA also received a telephone inquiry that led to the discovery of an error in the preliminary calculations for NUSA allocations of CSAPR SO₂ Group 2 allowances. Specifically, because of incorrect processing of a change in the plant code used to identify certain existing units at the Wansley power plant in Georgia,

¹⁰ See 81 FR at 74564-65.

¹¹ See 81 FR at 74565; 40 CFR 97.810(a)(17)(ii).

Wansley CC units 6A, 6B, 7A, and 7B were incorrectly identified as new units eligible to receive NUSA allocations. We have corrected the error and these units are not allocated allowances as new units in the final calculations.

The final unit-by-unit data and allowance allocation calculations are set forth in Excel spreadsheets titled "CSAPR_NUSA_2017_NO_x_Annual_1st_Round_Final_Data", "CSAPR_NUSA_2017_NO_x_OS_1st_Round_Final_Data", and "CSAPR_NUSA_2017_SO₂_1st_Round_Final_Data", available on EPA's website at <https://www.epa.gov/csapr/csapr-compliance-year-2017-nusa-nodas>. The three spreadsheets show our final determinations of first-round 2017 NUSA allocations under the CSAPR NO_x annual, CSAPR NO_x ozone season (Group 1 and Group 2), and CSAPR SO₂ (Group 1 and Group 2) trading programs, respectively.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. We also note that allocations are subject to potential correction.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).)

Dated: July 27, 2017.

Karen L. Orehowsky,
Acting Director, Clean Air Markets Division,
Office of Atmospheric Programs,
Office of Air and Radiation.

[FR Doc. 2017-19822 Filed: 9/15/2017 8:45 am; Publication Date: 9/18/2017]