List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: December 15, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 00–32563 Filed 12–20–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL–6919–7]

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport—Federal NO_X Budget Trading Program, Rule Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the Federal NO_X Budget Trading Program regulations to revise the allowance allocations for certain NO_X Budget units subject to the program. In January 2000, EPA took final action (the January 2000 final rule) under section 126 of the Clean Air Act (CAA) on petitions filed by eight Northeastern States seeking to mitigate interstate transport of nitrogen oxides (NO_X), one of the precursors of ground-level ozone. EPA determined that a number of large electric generating units (EGUs) and large industrial boilers and turbines (non-EGUs) named in the petitions emit in violation of the CAA prohibitions against significantly contributing to nonattainment or maintenance problems in the petitioning States. EPA also established the Federal NO_X Budget Trading Program as the control remedy for these sources, determined allowable emissions for the sources, and allocated authorizations to emit NO_X (*i.e.*, NO_X allowances) to the sources.

After promulgation of EPA's January 2000 final rule, some owners, or associations of owners, of EGUs or non-EGUs filed petitions with the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) challenging, among other things, the allowance allocations for certain units under the rule. Subsequently, EPA entered into settlements with these owners or associations of owners. Today's action proposes to revise the allocations in the January 2000 final rule for these units in a manner consistent with the settlements.

In addition, after promulgation of the January 2000 final rule, owners of non-EGUs requested EPA to correct allowance allocations for two other units under the rule. EPA responded that it was treating the requests as requests for reconsideration of the two units' allocations under the rule and would propose to revise the allocations. Today's action includes such a proposal for these units.

DATES: If you want to submit any written comments on this proposed rule, EPA must receive the written comments by January 30, 2001.

Public Hearing: A public hearing will be held at 9:30 a.m. on January 2, 2001.

ADDRESSES: *Comments*: If you submit any written comments on this proposed rule, the comments must reference Docket No. A–97–43 and must be submitted in duplicate to Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460.

Docket: Docket No. A–97–43, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center at the above address. EPA may charge a reasonable fee for copying.

Public Hearing: The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, at (202) 564–9151, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6204J), Washington, DC 20460; or the Acid Rain Hotline at (202) 564–9089.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under Docket No. A–97–43 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, that does not include any information claimed as confidential business information, is available for inspection from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. In addition, the **Federal Register** rulemaking actions under section 126 and the associated documents are located at http://www.epa.gov/ttn/rto/126.

The EPA has issued a separate rule on NO_X transport entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (the NO_X State implementation plan call (NO_X SIP call)). The rulemaking docket for that rule contains information and analyses that were relied on in the January 2000 final rule. Therefore, EPA is incorporating by reference the entire NO_X SIP call record for purposes of today's rulemaking. Documents related to the NO_X SIP call are available for inspection in Docket No. A–96–56 at the address and times given above. In addition, the documents associated with the NO_X SIP call are located at http://www.epa.gov/ttn/oarpg/otagsip.html.

Outline

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I. National Technology Transfer and Advancement Act

I. Background

In January 2000, EPA took final action (the January 2000 final rule) under section 126 of the CAA on petitions filed by eight Northeastern States seeking to mitigate interstate transport of NO_X.[1] 65 FR 2674 (January 18, 2000). Section 126 of the CAA authorizes a downwind State to petition EPA for a finding that an existing or new (or modified) major stationary source or a group of such sources emits or would emit in violation of section 110(a)(2)(D)(i) by contributing significantly to nonattainment of a National Ambient Air Quality Standard or interfering with maintenance of such a standard in a downwind State. EPA determined that certain large electric generating units (EGUs) and large industrial boilers and turbines (non-EGUs) named in the petitions emit in violation of the CAA prohibitions against significantly contributing to nonattainment or maintenance problems in the petitioning States. The EGUs and non-EGUs covered by the January 2000 final rule are in the following States or portions of States and the District of Columbia: Delaware; Indiana; Kentucky; Maryland; Michigan; North Carolina; New Jersey; New York; Ohio; Pennsylvania; Virginia; and West Virginia. 65 FR 2675.

EPA established the Federal NO_X Budget Trading Program as the control remedy for these sources. EPA determined allowable emissions for the sources and allocated authorizations to emit NO_X (*i.e.*, NO_X allowances) to the sources. Under this program, an affected unit (referred to as a ''NO_X Budget unit'') may buy or sell allowances but must hold, after the end of the ozone season, a number of allowances at least equal to the number of tons of NO_X that the unit emitted during that ozone season.

For purposes of allocating allowances, EPA set for each State (or portion of State) NO_X emission budgets (in tons of NO_X) for EGUs and non-EGUs. EPA then allocated allowances to each existing unit, based on the unit's historical heat input. For EGUs, the average of the two highest ozone season heat inputs from 1995–1998 was used as the historical heat input. For non-EGU's, the 1995 ozone season heat input or, if data were available, the average of the two highest ozone season heat inputs from 1995–1998 was used as the historical heat input. 40 CFR 97.42(a). EPA also adjusted each unit's allocations so that the total number of allowances allocated to EGUs and the total number of allowances allocated to non-EGUs in a given State equaled 95 percent of the EGU budget and of the non-EGU budget respectively for that State. 40 CFR 97.42(b) and (c). Five percent of the budget was reserved for allocations to new units.

After EPA promulgated the January 2000 final rule, owners, or associations of owners, of EGUs or non-EGUs filed petitions with the D.C. Circuit challenging, among other things, the allowance allocations for certain units in the Federal NO_X Budget Trading Program regulations. Subsequently, EPA entered into settlements with some of these owners and associations of owners. Today's action proposes to revise the allowance allocations in the January 2000 rule for these units, in a manner consistent with the settlements.

In addition, after promulgation of the January 2000 final rule, owners of non-EGUs submitted letters to EPA requesting correction of the allowance allocations for two other units under the rule. EPA responded that it was treating the letters as requests for reconsideration of the two units' allocations under the rule and would propose to revise the allocations. Today's action includes such a proposal for these units.

II. Proposed Rule Revisions

EPA is proposing to make specific, limited revisions to provisions of the Federal NO_X Budget Trading Program rule, *i.e.*, part 97, in order to change the NO_X allowance allocations for certain NO_X Budget units. In today's proposal, EPA is specifying which units will receive revised allocations, how EPA will obtain the additional allowances used for the revised allocations, and what will be the amount of each unit's revised allocation. For the reasons discussed below, EPA proposes to revise the allocations for units discussed in section II.A of today's preamble. To provide the revised allocations, EPA proposes to use first allowances that were allocated initially to units that EPA has subsequently determined are not NO_X Budget units and therefore not subject to the Federal NO_X Budget Trading Program. If an insufficient amount of allowances are available from such units, EPA proposes to then use allowances from the compliance supplement pool. This approach to obtaining allowances for the revised allocations is discussed in section II.B. In section II.C, EPA proposes the amount of each unit's revised allocation.

The specific rule revisions necessary to implement the above-described approach are discussed in section II.D of today's preamble. EPA is proposing to revise Appendices A and B to part 97 in order to include revised allocations for the units identified in section II.A and remove allocations for some other units that EPA has previously determined not to be NO_X Budget units. EPA is also proposing changes to § 97.43 (compliance supplement pool provisions) in order to provide, where necessary, allowances that supplement the allocation change proposed in Appendix A or B.

Further, EPA is proposing revisions to § 97.42 (allocation procedures) to provide the Administrator general authority to issue orders to correct other units' allocations, where appropriate, using allowances allocated initially to units determined not to be NO_X Budget units. EPA is also proposing revisions to § 97.43 to provide the Administrator general authority to issue orders to correct units' allocations, where appropriate, using allowances from the compliance supplement pool.

EPA has not considered, and is not requesting comment on, any other changes to part 97 or the January 2000 final rule. This proposal is limited to changes to part 97 that are necessary either: to correct the allocations for the units specifically identified here; or to provide the Administrator general authority to address similar allocation-quantity issues that may arise in the future.

A. Rationale for Proposing To Revise Units' Allocations

The units for which EPA is proposing revised allocations are discussed below.

1. ''Stranded'' Units

EPA is proposing revised allocations for a group of identified units referred to here as ''stranded'' units. These are units that commenced operation after May 1, 1995 and before May 1, 1997. In the October 21, 1998 proposed rule for the Federal NO_X Budget Trading Program (October 1998 proposed rule), EPA did not propose any allocations for these units for 2003–2007. *See, e.g.*, 63 FR 56292, 56377–87 (October 21, 1998). However, the proposed rule included a provision that established an allocation set-aside for allocating allowances to new units for 2003–2007. New units were the units commencing operation ''on or after May 1 of period used to calculate [historical] heat input'' for determining allocations for existing units for 2003–2007. 63 FR 56347

[1] This background is for the convenience of the reader to understand better the proposed revisions in sections II.B.2,C, and D below. EPA is not reconsidering or requesting comment on any of the provisions in part 97, except to the extent discussed in the proposals in sections II.B.2,C, and D.

(§ 97.42(d)). For existing EGUs, the historical heat input for 2003–2007 allocations was ''the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997.'' *Id.* (§ 97.42(a)(1)(i)). For existing non-EGUs, the historical heat input for 2003–2007 allocations was ''the control period in 1995.'' *Id.* (§ 97.42(a)(1)(i)). In light of these provisions, owners of units commencing operation on or after May 1, 1995 could reasonably have assumed that their units would be treated as new units to be allocated allowances under § 97.42(d). They therefore had no reason to be concerned about the failure to include their units in the allocations tables in the October 1998 proposed rule or in a subsequent Notice of Data Availability (64 FR 43124 (September 9, 1999)) requesting comment on units' heat input.

In the January 2000 final rule, EPA changed the periods used for historical heat input and the cutoff date for distinguishing between existing units receiving allocations under § 97.42(b) or (c) and new units receiving allocations under § 97.42(d). For purposes of 2003–2007 allocations, new units are defined as units commencing operation on or after May 1, 1997. 40 CFR 97.42(d). Consequently, the final rule makes units commencing operation on or after May 1, 1995 but before May 1, 1997 ineligible for the allocation set-aside.

However, as in the proposed rule, such units are still not listed as existing units with allocations in Appendix A or B in the January 2000 final rule. EPA has identified three such units: Unit 0B7, plant 00003, Union Carbide—South Charleston Plant, Kanawha County, West Virginia; and the Package Boiler at Weyerhaeuser Paper Company Plymouth, plant 0069, Martin County and Power Boiler No. 2 at Weyerhaeuser Paper Company New Bern Mill, plant 0104, Craven County in North Carolina. As noted above, the owners of such units had no reason to comment on the absence of their units in EPA's notices requesting comment on allocations or heat input data. Under these circumstances, EPA believes that the owners did not have a reasonable opportunity to comment on the lack of allocations for their units. Therefore, EPA proposes to provide allocations for these units.

In addition, there is another unit with circumstances analogous to those of the ''stranded'' units. SEI Birchwood, plant 12 (Birchwood) commenced operation after the ozone season in 1996 and so would have been a new unit under the October 1998 proposed rule. Subsequently, in the Notice of Data Availability, EPA requested comment on heat input data provided by the State of Virginia on Birchwood for 1996–1998. These data turned out to be erroneous. The owners had little or no reason to comment on the data since, under the October 21, 1998 proposed rule, the unit seemed to be a new unit that would receive allocations under § 97.42(d) based on maximum design heat input, not any actual heat input data. 40 CFR 97.42(d)(3) and (4). Under these circumstances, EPA believes that, as in the case of the ''stranded'' units, there was not a reasonable opportunity for the Birchwood owners to comment. Therefore, EPA proposes to provide allocations for this unit as well.

2. West Virginia Non-EGUs

EPA is also proposing revised allocations for the non-EGU units in West Virginia. One of these units (Unit 006, plant 00001, Elkem Metals Company—Alloy L.P. Plant in Fayette County, West Virginia (Elkem Metals)) was allocated 58 allowances in the October 1998 proposed rule. Subsequently, EPA received comments from a State agency mistakenly indicating that the unit had a significantly higher heat input than the heat input on which the proposed allocation was based. The owners of the non-EGUs in West Virginia did not realize that erroneous data had been submitted and so did not submit comments on the data. Unaware that the data was erroneous, EPA increased the unit's allocation to 701 allowances and adjusted downward the allocations for the other non-EGUs in West Virginia so that the total non-EGU allocations would not exceed the non-EGU budget for the State. As a result, the allocations for West Virginia non-EGUs were distorted, with Elkem Metals receiving a significantly overstated allocation and the other non-EGUs receiving significantly understated allocations.

However, the owners of all of the units affected by the erroneous data, including the owner of the unit with the overstated allocation, agree on what are the correct data and the correct resulting allocations. Further, one ''stranded'' non-EGU in West Virginia (discussed above) did not receive any allowances. EPA therefore proposes to revise the non-EGU allocations in West Virginia to correct these errors.

3. Blue Ridge Paper Products Company, Riley Bark Boiler, Plant 0159

EPA is proposing revised allocations for the Blue Ridge Paper Products Company, Riley Bark Boiler, Plant 0159 in Haywood County, North Carolina. The unit burns primarily coal, supplemented by some bark, and so qualifies as a fossil fuel fired unit. The unit's prior owner submitted comments in hardcopy and in electronic format to EPA. The comments stated that the unit was fossil fuel fired, and thus a NO_X Budget unit, and that the unit had been erroneously excluded from the non-EGU inventory for North Carolina.

However, the hardcopy and electronic versions of the comments were inconsistent. The electronic version indicted that the unit burned primarily bark, which would mean the unit would not actually qualify as fossil fuel fired, while the hardcopy version indicated that the unit burned primarily coal, which would mean the unit would quality as fossil fuel fired. Apparently for this reason, EPA misinterpreted the comments and did not include the unit in allocations in either the October 1998 proposed rule or the January 2000 final rule and thereby allocated zero allowances for the unit. EPA therefore proposes to provide allocations for the unit.

4. Michigan State University, Unit 0056, Plant K3249

EPA is proposing revised allocations for Michigan State University, Unit 0056, Plant K3249 in Ingham County, Michigan (Michigan State). In the October 1998 proposed rule, EPA allocated 168 allowances to the unit. Subsequently, EPA received comments from the State of Michigan and attached comments from Michigan State University. The comments replaced the information on the unit's NO_X emissions for 1995 with blanks and suggested using 1997 information on the unit instead. EPA misinterpreted the comments as indicating that the unit was not operating at all. EPA allocated the unit zero allowances in the January 2000 final rule. EPA therefore proposes to provide allocations for the unit.

B. Proposed Sources of NO_X Allowances for Revised Allocations

This section discusses the proposed sources of NO_X allowances for revised allocations for the units identified above. EPA maintains that, to ensure that the overall environmental goals of the section 126 rulemaking are met and to provide finality concerning the State EGU and non-EGU budgets set by EPA rulemakings,[2] the quantity of NO_X

[2] The State EGU and non-EGU budgets are the result of extensive rulemaking proceedings. *See, e.g.*, 62 FR 60318 (November 7, 1997) (proposing State EGU and non-EGU budgets), 63 FR 57356 (October 27, 1998) (setting EGU and non-EGU budgets), 63 FR 71220 (December 24, 1998) (extending comment period on EGU and non-EGU budgets), 64 FR 26298 (May 14, 1999) (technical

emissions allowed from all units in a particular State should not change under today's proposed rule from the amount allowed from such units under the January 2000 final rule. Therefore, the proposed rule revisions must revise the identified units' allocations in a way that holds constant the total number of allowances available in each State.

Under the January 2000 final rule, allowances may be allocated to units in a State from several pools of allowances: a pool consisting of 95% of the State EGU or non-EGU budget and used for allocations to existing units in Appendix A or B; a pool (the allocation set-aside) consisting of 5% of the State EGU and non-EGU budgets used for allocations to new units; and the compliance supplement pool for the State established to address electric reliability concerns. Part 97 includes provisions addressing allocations from each of these pools of allowances. In today's rulemaking, EPA is considering using allowances from one or more of these pools to provide revised allocations for the units identified in today's proposal.

With regard to the West Virginia non-EGUs (including one of the ''stranded'' units), EPA believes that the revised allocations can be implemented by redistributing among the units the allowances allocated to West Virginia non-EGUs in Appendix B of the January 2000 final rule. EPA is proposing today such a redistribution of the allowances for West Virginia non-EGUs.

For the remaining units identified as warranting revised allocations (*i.e.*, two ''stranded'' units and the Birchwood, Blue Ridge, and Michigan State units), EPA is proposing today to use the allowances that were allocated in the January 2000 final rule to other units subsequently determined not to be NO_X Budget units. To the extent an insufficient amount of allowances are available from such non-NO_X Budget units, EPA is proposing to use allowances from the compliance supplement pool.

1. Sources of A allowances Under Part 97

The discussion below summarizes the existing provisions of part 97 that establish several pools of allowances that may be allocated to units.[3]

a. *Allocations in Appendices A and B to part 97.* First, part 97 establishes pools consisting of 95% of the State EGU or non-EGU budgets respectively and uses these allowances for allocations to existing units each year during 2003–2007, as listed in Appendices A and B. Section 97.42(b) and (c) set forth the procedures for determining allocations from the pools for EGUs and non-EGUs respectively. *See* 40 CFR 97.42(b)(2) and (c)(2) (providing for adjustment of unit allocations to ensure that the total amount of allocations equal 95% of the EGU or non-EGU budget for the State). Further, § 97.42(g) establishes procedures for handling allocations provided in Appendix A or B to a recipient that is not actually a NO_X Budget unit and that therefore is not subject to part 97.[4] In particular, if the Administrator determines that the recipient is not a NO_X Budget unit, the Administrator will not generally record in the NO_X Allowance Tracking System the recipient's allocation listed in Appendix A or B. 40 CFR 97.42(g)(1)(i). Instead, the Administrator will transfer the unrecorded allowances to the allocation set-aside for new units for the State. 40 CFR 97.42(g)(2).

b. *Allocation Set-Aside.* A second pool of allowances established by part 97 is the allocation set-aside, consisting of 5% of the sum of the State EGU and non-EGU budgets. 40 CFR 97.42(d)(1). As noted above, the rule uses the allocation set-aside to allocate allowances to new units, *i.e.*, units that began operating after the period whose heat input values are used to allocate to existing units under § 97.42(b) or (c). New units are initially allocated allowances year-by-year based on the unit's maximum design heat input. 40 CFR 97.42(d)(3) and (4). After the ozone season, the Administrator deducts an amount of allowances equal to the difference between the initial allocation and an allocation based on the unit's actual ozone season heat input. 40 CFR 97.42(e)(1). The deducted allowances are transferred back to the allocation set-aside, whose unallocated allowances are distributed to the existing units. 40 CFR 97.42(e)(2) and (f).

c. *Compliance Supplement Pool.* The third pool of allowances established by part 97 is the compliance supplement pool, as set forth for each State in Appendix D to part 97. Compliance supplement pool allowances may be used in 2003 or 2004 to meet the requirement to hold allowances at least equal to NO_X emissions. These allowances expire after 2004. 40 CFR 97.43(c)(7). The purpose of the compliance supplement pool is to provide additional allowances above and beyond the State EGU and non-EGU budgets for 2003 and 2004 for units ''that are unable to meet the compliance deadline'' during those years. 63 FR 57356, 57428 (October 27, 1998) (explaining purpose of pool in NO_X SIP call); *see also* 64 FR 28250, 28310 (May 25, 1999) (adopting pool in Federal NO_X Budget Trading Program for same reasons as in NO_X SIP call). EPA explained that it believed that the compliance deadline is feasible without the compliance supplement pool. However, the additional allowances in this pool will ensure that any unit unable to install NO_X control equipment (*e.g.*, because of concerns for electric reliability during a shutdown for installation) in the first two years of the Federal NO_X Budget Trading Program are able to obtain allowances until they can install the equipment. *See* 63 FR 57428.

Owners and operators of units that reduce the units' NO_X emissions below a specified level after 2000 and before 2003, the year when the control requirements of the Federal NO_X Budget Trading Program first take effect, may apply for compliance supplement pool allowances. 40 CFR 97.43(a). Owners and operators of units in the Ozone Transport Commission NO_X Budget Program may also apply for compliance supplement pool allowances to the extent the units have banked allowances for 2000 or 2001 under that program. 40 CFR 97.43(b). Although the compliance supplement pool is distributed to units with early reductions or with banked allowances under the Ozone Transport Commission NO_X Budget Trading Program, units ''that need extra allowances for compliance will have access to them through the allowance market.'' 65 FR 2714; *see also* Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport, Docket No. A–97–43, XI–C–01 (December 1999) (Response to Comment for January 2000 rule), section II.F.1 at 65 (stating that any unit unable to install controls by 2003 ''may buy allowances from other sources'' and therefore

amendment to EGU and non-EGU budgets in response to comments), 65 FR 11222 (March 2, 2000) (second technical amendment to EGU and non-EGU budgets in response to comments).

[3] This background information is for the convenience of the reader to understand better the proposed revisions in sections II.B.2, C, and D below. EPA is not reconsidering or requesting comment on any of the provisions of part 97, except to the extent discussed in the proposals in sections II.B.2, C, and D.

[4] As discussed in section II.D.1 below, EPA has issued letters determining that 31 units allocated allowances in Appendix A or B to part 97 are not actually NO_X Budget units and that the allowances will therefore not be recorded. Generally, a unit was misidentified as a NO_X Budget unit due to an error concerning the size, type, fuel, or location of the unit.

rejecting claim that ''additional allowances [*e.g.*, compliance supplement pool allowances] * * * need to be distributed via a mechanism other than the allowance market to ensure that all sources will be in compliance'').

If the total amount of compliance supplement pool allowances requested for units in a State exceeds the total amount of allowances in the State's compliance supplement pool, the Administrator adjusts the amounts allocated so that the allocations are limited by the amount in the pool. 40 CFR 97.43(c)(4). If the total amount requested is less than the amount in the pool, the unrequested amount is not allocated to any unit.

2. Proposed Approach for Obtaining Allowances for Units' Revised Allocations

EPA's general approach to obtaining allowances for revised allocations is to adopt a methodology that will result in the least disruption to the Federal NO_X Budget Trading Program, while maintaining unchanged the environmental benefits of the program. In particular, EPA believes it should minimize the disruption to NO_X Budget units not involved in the issues giving rise to the need for revised allocations.

a. *Proposed Approach for West Virginia Non-EGUs.* Since the issues concerning the West Virginia non-EGUs (including one ''stranded'' unit) involve the entire West Virginia non-EGU budget sector, EPA proposes to obtain allowances for the non-EGUs' revised allocations by redistributing the allocations for that sector. The redistribution will not affect any units other than those needing revised allocations. Further, the redistribution is the least disruptive approach for revising the units' allocations. In fact, since the owners of all the West Virginia non-EGUs have agreed on the amounts of the revised allocations for the units, the owners could have accomplished this redistribution on their own at any time, simply by using the unrestricted trading allowed under the Federal NO_X Budget Trading Program to transfer allowances among the units. Nonetheless, EPA is proposing to redistribute the allocations, as requested by the owners, through today's rulemaking.

b. *Proposed approach for other units.* For the other units identified above, EPA is proposing to use first the allowances that were allocated in the January 2000 final rule to units that EPA subsequently determined not to be NO_X Budget units. To the extent an insufficient amount of allowances are available from such non-NO_X Budget units, EPA proposes to use allowances from the compliance supplement pool.

If the two ''stranded'' units[5] and the Birchwood, Blue Ridge, and Michigan State units had been provided the proper number of allowances in the January 2000 final rule, the allocations for all units in their respective budget sectors in their respective States would have been affected. This is because, under § 97.42(b) and (c), each existing unit is allocated its proportionate share of the budget for its respective sector (EGU or non-EGU) for its respective State. For example, allocations for an EGU in a given State are determined by: multiplying an emission rate (0.15 lb/mmBtu) times each unit's historical heat input; totaling the results for all EGUs in the State; and adjusting each EGU's allocation proportionately until the total number of allowances allocated to the EGUs in the State equals 95 percent of the State's EGU budget. Non-EGU allocations are determined in the same way except that the emission rate (0.17 lb/mmBtu) is different and the allocations must equal 95 percent of the non-EGU budget.

One approach to providing revised allocations for the ''stranded'', Birchwood, Blue Ridge, and Michigan State units would be to recreate the allocations that would have resulted if those units had been properly handled in the January 2000 rule. This would require reallocating allowances for each, entire budget sector (*i.e.*, the EGU or non-EGU sector for a given State) that includes one or more of these five units. EPA believes that approach would result in disruption of the Federal NO_X Budget Trading Program, and for the units in the program, far out of proportion to the scope of the problem. Consequently, EPA is proposing an approach that appears to be less disruptive to the Federal NO_X Budget Trading Program and the units in the program.

i. *Use of allocations to non-NO_X* Budget units. EPA believes that using allowances that were allocated mistakenly under the January 2000 final rule to units that were not actually NO_X Budget units is the least disruptive method of providing allowances for the revised allocations.[6] Appendices A and B of the January 2000 final rule list the allocations for specific units thought to be NO_X Budget units. Under § 97.42(g)(1)(i), if EPA subsequently determines that any unit in Appendix A or B is not actually a NO_X Budget unit, the Administrator will not record the listed allocations in an account for the unit. Instead, the Administrator will record the allocations in the allocation set-aside for new units in the State in which the unit is located, in addition to the 5 percent of the EGU and non-EGU budgets already comprising the set-aside. 40 CFR 97.42(g)(2).

In establishing this mechanism for correcting allocations to non-NO_X Budget units, EPA stated that it expected that such allocations would occur ''rarely, if ever.'' 65 FR 2707. Obviously, EPA's intent was not to make errors resulting in allocations to non-NO_X Budget units. Since the mechanism for correcting such errors was expected to be rarely needed, owners and operators of new units had no reasonable expectation that the mechanism would ever be used and that any incorrectly allocated allowances would be added to the allocation set-aside. Consequently, EPA believes that revising NO_X Budget units' allocations using allowances erroneously allocated to non-NO_X Budget units is the approach that is the least disruptive of reasonable expectations of owners and operators and, thus, of compliance planning for NO_X Budget units.

ii. *Use of compliance supplement pool allowances.* EPA believes that, to the extent the number of allowances available from non-NO_X Budget units in a State under § 97.42(g) is insufficient to cover the revised allocations for the units in the State, the compliance supplement pool for the State represents the next least disruptive source for obtaining the remaining allowances needed for revised allocations.[7] As discussed above, the purpose of the compliance supplement pool is to make available allowances in addition to the EGU and non-EGU budget amounts so any units unable to install NO_X emission controls by 2003 can buy additional allowances in the market to help meet the requirement to hold allowances equal to emissions. 63 FR 57428 and 65 FR 2714; *see also* Response to Comment for January 2000 rule, section II.F.1 at 65.

Under the January 2000 final rule, this purpose is accomplished by distributing the compliance supplement pool allowances to owners and operators of

[5] The third ''stranded'' unit is a West Virginia non-EGU, whose revised allocation is addressed above in section II.B.2.a of this preamble.

[6] *See* n.3.

[7] As discussed below, EPA presently anticipates that it will need to use compliance supplement pool allowances only for the Birchwood unit and that allocations for non-NO_X Budget units will be sufficient to provide the revised allocations for the other identified units. However, EPA proposes to use the compliance supplement pool whenever allocations to non-NO_X Budget units are insufficient to provide the full amount of the revised allocations determine to be appropriate for a unit.

units that make NO_X emission reductions before the 2003 compliance date for the Federal NO_X Budget Trading Program. See 40 CFR 97.43(a) and (b) (requirements for early reductions or for banked allowances in the Ozone Transport Commission NO_X Budget Program) and 97.43(c) (procedure for distributing compliance supplement pool).

EPA believes that using allowances from the compliance supplement pool for revised allocations to the ''stranded'', Birchwood, Blue Ridge, and Michigan State units is consistent with the purpose of the compliance supplement pool. Whether the recipients of compliance supplement pool allowances are units that made early reductions or are units receiving revised allocations, these allowances still represent an increase in the total supply of allowances beyond the State EGU and non-EGU budgets. While the ''stranded'', Birchwood, Blue Ridge, and Michigan State units are NO_X Budget units and so will need to use some allowances to cover emissions, this would be true whether or not the units receive revised allocations from the compliance supplement pool. Thus, the use of compliance supplement pool allowances to provide revised allocations represents a real increase in the total supply of allowances. Any units that need allowances for compliance will have greater access to allowances for purchase due to the increased supply in the market, regardless of who initially receives allowances from the compliance supplement pool.

EPA notes that compliance supplement pool allowances are only available for two years (2003 and 2004), after which unused compliance supplement pool allowances expire. The revised allocations for the ''stranded'', Birchwood, Blue Ridge, and Michigan State units are for five years (2003–2007). Some of the compliance supplement pool allowances used to provide revised allocations may expire before the year for which the units may need them for compliance. However, this should not pose a problem since the owners and operators of those units will, to the extent necessary for compliance, be able to sell their compliance supplement pool allowances in the allowance market and buy other allowances that will not expire.[8]

EPA recognizes that using some of the compliance supplement pool allowances for revised allocations reduces the amount of allowances potentially available for early reductions. However, the purpose of the compliance supplement pool is not to reward early reductions but rather is to increase the total supply of allowances to ensure units meet the 2003 compliance deadline. EPA provided credit for early reductions ''merely as a mechanism for managing the [compliance supplement pool], not as an independent program with a purpose separate from that of the [compliance supplement pool]''. *State of Michigan* v. *EPA*, 213 F.3d 663, 694 (D.C. Cir. 2000). Further, EPA believes that the potential for reduced availability (as a result of today's proposal) of compliance supplement pool allowances for early reductions should be balanced against the fact that, as discussed below, using other sources of allowances for revised allocations would be more disruptive to the Federal NO_X Budget Trading Program and other units.

In particular, using allowances from the new-unit allocation set-aside or reallocating to all units in the respective budget sectors of the ''stranded'', Birchwood, Blue Ridge, and Michigan State units would be significantly more disruptive to the Federal NO_X Budget Trading Program and other units than using compliance supplement pool allowances. The allocation set-aside plays the important role of integrating new units into the Federal NO_X Budget Trading Program. 65 FR 2705 The set-aside is the sole source of allowances for allocating to new units until such units are treated as existing units in future allocation updating. EPA set the size of the allocation set-aside at 5 percent of the EGU and non-EGU budgets so that the pool would be large enough to accommodate all new sources. *Id.* EPA also decided to distribute the set-aside each year to all new units whose owners and operators request allocations by January 1 of that year, rather than distributing the set-aside on a first-come, first-served basis because the former approach is likely to ensure that each new unit receives at least some allowances. 65 FR 2706. EPA is concerned that using the allocation set-aside for revised allocations for existing units would likely reduce the allocation made to each new unit.

Further, EPA believes that the most disruptive approach for obtaining allowances for revised allocations would be to reallocate to all units in the respective State EGU or non-EGU budget sector for the ''stranded'', Birchwood, Blue Ridge, or Michigan State units. As discussed above, reallocation would likely change the allocation for every unit in the State budget sector. This would result in disruption of the Federal NO_X Budget Trading Program and for other units far out of proportion to the need to obtain allowances for five units.

In summary, EPA must balance several considerations in deciding whether to use compliance supplement pool allowances for revised allocations. On one hand, using such allowances will make fewer allowances potentially available for early reductions. On the other hand, this use of compliance supplement pool allowances is consistent with the pool's purpose of increasing the supply of allowances to ensure that units will be able to meet the 2003 compliance deadline. Further, the impact of using compliance supplement pool allowances for revised allocations will be limited because these allowances will be used only to the extent that the allocations to non-NO_X Budget units are insufficient to implement revised allocations. Finally, the alternative approaches to obtaining allowances would be more disruptive to the Federal NO_X Budget Trading Program and other units. On balance, EPA believes that the use of compliance supplement pool allowances is the best approach (after using the non-NO_X Budget unit allocations) for obtaining allowances in the limited cases where revised allocations are warranted.

EPA therefore proposes this approach. However, EPA requests comment on alternative approaches discussed above.

C. Proposed Amounts of Allowances for Units' Revised Allocations

EPA proposes to use, as revised allocations for the West Virginia non-EGUs (including one ''stranded'' unit), the allocations requested by the owners of those units in the request for administrative stay and petition for reconsideration submitted to EPA on May 1, 2000. (EPA intends to respond directly to the request for administrative stay, apart from today's action.) All of the owners for West Virginia non-EGUs—including the owner of the unit that received a significantly overstated allocation in the January 2000 final rule—agree on the amounts of the allocations and the total of those allocations equals the West Virginia non-EGU budget. Under these circumstances, EPA believes that the requested allocations should be used as the revised allocations in today's proposal.

[8] EPA notes that part 97 integrates the allowance markets under the Federal NO_X Budget Trading Program and under any approved State NO_X Budget Trading Program by allowing units in the two programs to trade allowances. *See* 40 CFR 97.2 (defining ''NO_X allowance'' to include allowances issued under approved State programs).

Further, EPA proposes to calculate the revised allocations for two ''stranded'' units and the Birchwood, Blue Ridge, and Michigan State units by using the average emission rate underlying the allocations for the respective unit's State budget sector (EGUs or non-EGUs) in Appendix A or B in the January 2000 final rule. As discussed above, the allocations to each EGU in Appendix A are calculated by multiplying the unit's historical heat input by an initial average emission rate (0.15 lb/mmBtu) and then adjusting the results so that the total of the allocations to all EGUs in the unit's State equals 95 percent of the State EGU budget. As a result of the latter adjustment, all EGU allocations for the State have the same underlying average emission rate that, when multiplied by each unit's respective historical heat input, equals the unit's allocation. The same is true for non-EGUs except that the initial average emission rate is 0.17 lb/mmBtu, total non-EGU allocations for a State equal 95 percent of the State's non-EGU budget, and the underlying average emission rate for all non-EGUs' allocations in the State may differ from that for EGUs' allocations in that State.

In calculating allocations for the ''stranded'', Birchwood, Blue Ridge, and Michigan State units, EPA proposes to use the underlying average emission rate for units in the State budget sector in the same State as the respective unit. EPA proposes to multiply each unit's historical heat input by the appropriate underlying average emission rate. Each unit's historical heat input is the heat input for the period set forth in § 97.42(a) and is supported by documentation submitted to EPA. The supporting documentation is generally heat input data routinely submitted to the State or routinely recorded by the owners and operators. *See* 40 CFR 97.42(a) (establishing 1995–1998 as the historical period for 2003–2007 allocations). This approach ensures that the ''stranded'', Birchwood, Blue Ridge, and Michigan State units are allocated allowances on the same basis as units in the each respective State budget sector. *See* Memorandum on Calculation of Revised Allocations (showing how the revised allocations are calculated and attaching the supporting documentation of the heat input data).

D. Proposed Changes to Regulatory Text

This section discusses the proposed revisions to the language of specific sections of part 97. EPA is not considering, and is not requesting comment on, any other changes to these sections or to part 97 in general.

1. Appendices A and B Revisions

EPA is proposing several rule revisions to implement the above-described revised allocations and approach for obtaining allowances for those allocations. First, EPA is proposing to revise Appendices A and B to part 97 in order to include revised allocation amounts for the identified units and remove allocations for some other units that EPA has previously determined not to be NO_X Budget units. In addition, when Appendix A or B incorrectly references an identified unit or fails to list the unit at all, EPA is proposing correction of these errors.

Specifically, EPA proposes to revise Appendix A to increase the allocation listed in Appendix A for the Birchwood unit, as discussed above. Because Appendix A erroneously shows 2 units at Birchwood, rather than only 1 unit, the revision also corrects that error.

In addition, EPA proposes to remove from Appendix A each of the 4 units that EPA has previously determined not to be a NO_X Budget unit. Under § 97.42(g), the Administrator may determine that a unit allocated allowances in Appendix A or B does not meet the applicability requirements in § 97.4 and so is not actually a NO_X Budget unit. In response to requests for such determinations, EPA has issued letters finding that 4 units listed in Appendix A are not NO_X Budget units and will not have allocations recorded in their accounts. Each letter provided a 30-day period, after the letter's issuance date, for submission of any objections. Since no objections were submitted, the determinations in the letters are final. EPA proposes to reflect these final determinations in revisions of Appendix A removing the 4 units and their allocations.

With regard to Appendix B, EPA specifically proposes to increase the allocations for all but one of the West Virginia non-EGUs (while reducing the allocation for one West Virginia non-EGU) and for the Blue Ridge and Michigan State units as discussed above. Errors in the reference in Appendix B to the Blue Ridge unit will also be corrected. Further, EPA proposes to add the ''stranded'' units, and allocations for them, to Appendix B. Moreover, EPA proposes to remove, from Appendix B, 27 units previously determined not to be NO_X Budget units and their allocations. As with the Appendix A units determined to be non-NO_X Budget units, EPA determined by letter that the units' allocations should not be recorded. Since no objections to the letters were submitted, the determinations in the letters are final. The proposal merely reflects, in regulatory text, these determinations.

2. Section 97.42(g) Revisions

EPA is also proposing revisions to § 97.42 (allocation procedures) that will authorize the Administrator to issue orders correcting other units' allocations, where correction is warranted, using allowances allocated to units determined not to be NO_X Budget units. Under the proposed revisions, the Administrator may determine that the number of allowances actually allocated to an existing NO_X Budget unit for 2003–2007 in Appendix A or B is less than the number of allowances provided under §§ 97.42(a) through (d) and that equitable considerations warrant correction of such unit's allocation. The Administrator may also determine that the number of allowances actually allocated to a new NO_X Budget unit for 2003–2007 or to any NO_X Budget unit for 2008 or thereafter, using procedures in §§ 97.42(a) through (d), is less than the number of allowances provided under §§ 97.42(a) through (d) and that equitable considerations warrant correction of such unit's allocation. Moreover, in the order, the Administrator may determine that allowances mistakenly allocated to non-NO_X Budget units located in the same State as the unit will be used to supplement, and thereby correct, the unit's actual allocation. EPA proposes that, in issuing such order, the Administrator will explain the reasons why the allocation should be corrected, will provide an opportunity for submission of objections, and may modify the order based on submitted objections. EPA intends to provide notice of each order in the **Federal Register**, and any person may submit objections to the order. The use of orders—rather than rule revisions—to make unit-specific allocations from allocations to non-NO_X Budget units (or, as discussed below, from the compliance supplement pool) will allow for much more expeditious correction of a unit's allocations where correction is warranted and still provide opportunity for interested parties to submit objections.

3. Section 97.43 Revisions

For all but one of the units proposed in today's action to receive revised allocations, EPA believes that the above-discussed revisions to Appendices A and B will provide the full amount of the proposed additional allowances. However, for the Birchwood unit (located in Virginia), there are insufficient llowances available from

allocations in Appendix A or B to non-NO_X Budget units in Virginia to provide to the Birchwood unit the full amount of allowances in the proposed revised allocation. EPA is therefore proposing to revise § 97.43 to add a new paragraph (c)(9) that will specifically allocate to the Birchwood unit in Virginia 725 allowances from the Virginia compliance supplement pool. The new provisions also address the interaction of this unit-specific allocation with other provisions of the rule concerning compliance supplement pool allowances. For example, the new provision addresses the recording of such allowances and the ability to use the allowances for compliance, and the effect of the unit-specific allocation on the number of allowances available in the Virginia compliance supplement pool for allocation to other units.

In addition, EPA proposes to revise § 97.43 to add a new paragraph (d) that will authorize the Administrator to issue orders determining that the number of allowances allocated in Appendix A or B (or using §§ 97.42(a) through (d) procedures) for a unit is less than the number of allowances provided under §§ 97.42(a) through (d) and that equitable considerations warrant correction of such allocation. The Administrator may further determine in the order that allowances in the compliance supplement pool of the State where the unit is located will be used to supplement, and thereby correct, the unit's allocation. EPA also proposes that, in issuing such order, the Administrator will explain the reasons why the allocation should be corrected and provide an opportunity for submission of objections and may modify the order based on submitted objections. EPA intends to provide notice of each order in the **Federal Register**, and any person may submit objections to the order. In addition, EPA proposes to provide notice in the **Federal Register** of any resulting reduction in the amount of allowances in the State compliance supplement pool that remain available for allocation for early reductions or for banked allowances from the Ozone Transport Commission NO_X Trading Program.

While the above-described proposed revisions adding a new § 97.43(d) are aimed at providing general authority to issue orders using the compliance supplement pool to correct a unit's allocations, EPA requests comment on using this general provision to issue such an order to the Birchwood unit, instead of using the proposed, unit-specific revisions in new § 97.43(c)(9) (discussed above) that add to the rule itself the allocation from the Virginia compliance supplement pool to the Birchwood unit. It may be preferable to avoid adding a permanent rule provision dealing only with the Birchwood unit and instead to accomplish the allocation by order under the proposed general authority proposed to be added in § 97.43(d).

In order to provide for this alternative approach to allocating Virginia compliance supplement pool allowances to the Birchwood unit, EPA is including, in a separate portion of the docket of today's proceeding, a draft order proposing to allocate 725 allowances from the Virginia compliance supplement pool to the Birchwood unit. EPA requests comment on the draft order and will provide upon request an opportunity for a conference on the draft order. If, after considering public comment on the proposed general authority provision in § 97.43(d) and on the draft order for the Birchwood unit, EPA decides to issue a final rule establishing such general authority, the Agency may also issue a final order allocating allowances from the Virginia compliance supplement pool to the Birchwood unit, instead of adopting the unit-specific revisions of § 97.43(c)(9). In light of the opportunity for comment on the draft letter in today's proceeding, EPA may issue the final order without further opportunity to submit objections. EPA also requests comment on this alternative approach to implementing the additional allocation for the Birchwood unit.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Impacts Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that today's proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Regulatory Flexibility Act: Small Entity Impacts

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), Pub. L. No. 104–121, generally requires the Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant, economic impact on a substantial number of small entities. Such entities include small businesses, small organizations, and small governmental jurisdictions.

In determining whether a rule has a significant, economic impact on a substantial number of small entities, the impact of concern is any significant, adverse, economic impact on small entities since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant, economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604.

Today's proposed rule revision is not significant enough to change the regulatory burden or economic impact of the existing Federal NO_X Budget Trading Program rule. Moreover, for virtually all NO_X Budget units addressed in the proposal, the proposed rule either will increase the number of allowances allocated and thus will reduce the burden of the program or will not change the number of allowances allocated and thus will not change the program burden. To the extent the proposed rule will remove certain units from the allocation tables, EPA has already issued final orders removing the allocations for these units, and the proposed rule has no effect other than to update the allocation tables to make them consistent with those orders. Only one unit's allocation is reduced by the proposed rule, and the owners of that unit, agreeing that the unit's original allocation was erroneously overstated, requested EPA to make the reduction. With regard to the reduction in the number of allowances in the compliance supplement pool available for early

reductions, the identity of the entities that may qualify in the future for early reduction credits is speculative, and there is no reason to believe that such entities will include a substantial number of small entities.

For these reasons, I certify that today's proposed rule would not have a significant, economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, the Agency generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule with ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Section 205 of the UMRA generally requires that, before promulgating a rule for which a written statement is needed, EPA must identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. For the reasons discussed above, today's proposed rule revision is not significant enough to change the overall regulatory burden or economic impact of the Federal NO_X Budget Trading Program rule on any parties, including State, local or tribal governments. Accordingly, little or no additional costs to State, local, or tribal governments in aggregate, or to the private sector, will result from the rule as proposed. Similarly, EPA has determined that today's rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of sections 202, 203, or 205 of the UMRA.

D. Paperwork Reduction Act

Today's proposed revisions to part 97 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Today's proposed rule does not change either the scope of the units covered by, or the information requirements for units under, the Federal NO_X Budget Trading Program.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the previously submitted Information Collection Request concerning the Federal NO_X Budget Trading Program may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564–2740.

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

The Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that the Agency determines: (1) Is ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's proposed rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866. Further, EPA does not have reason to believe that the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The proposed rule does not have a disproportionately high and adverse human health or environmental effects on minorities and low-income populations.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999), requires the Agency to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This proposed rule 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the Agency may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule will not significantly or uniquely affect the communities of Indian tribal governments or impose any direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d), 15 U.S.C. 272 note, directs the Agency to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Emissions trading, Intergovernmental relations, Nitrogen oxides, Ozone, Ozone transport, Reporting and recordkeeping requirements.

Dated: December 14, 2000.

Carol M. Browner,

Administrator.

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

PART 97—FEDERAL NO_X BUDGET TRAINING PROGRAM

1. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

2. Section 97.42 is amended by adding two sentences to the end of paragraph (g)(2) to read as follows:

§ 97.42 NO_X allowance allocations.

* * * * *

(g) * * *

(2) * * * Notwithstanding the prior sentence, the Administrator may instead issue an order allocating such NO_X allowances to a NO_X Budget unit to the extent that he or she determines that the number of allowances actually allocated in appendix A or B of this part, or under paragraph (b), (c), or (d) of this section, to such unit is less than the number of allowances provided under paragraphs (a) through (d) of this section and that equitable considerations warrant correction of such allocation. In issuing such order, the Administrator will explain the reasons why the allocation should be corrected, will provide notice and opportunity for submission of objections to the order, and may modify the order based on submitted objections.

3. Section 97.43 is amended by adding paragraphs(c)(9) and (d) to read as follows:

§ 97.43 Compliance supplement pool.

* * * * *

(c) * * *

(9) Notwithstanding paragraphs (c)(3) through (8) of this section

(i) SEI Birchwood, plant 12, unit 1 in Virginia is allocated 725 allowances from the Virginia compliance supplement pool;

(ii) The Administrator will record the allocation under paragraph (c)(9)(i) of this section when allocations are recorded under § 97.53(a); and

(iii) The deduction of allowances allocated under paragraph (c)(9)(i) of this section and the treatment of such allowances as banked allowances shall be governed by paragraphs (d)(4) and (5) of this section.

(d)(1) The Administrator may issue an order allocating NO_X allowances in the compliance supplement pool that are otherwise available for allocations under paragraph (c)(3) or (4) of this section to a NO_X Budget unit under the following circumstances. The Administrator may issue such an order if he or she determines that the number of allowances actually allocated in appendix A or B of this part, or under § 97.42(b), (c), or (d), to such unit is less than the number of allowances provided under §§ 97.42(a) through (d) and that equitable considerations warrant correction of such allocation. In issuing such order, the Administrator will explain the reasons why the allocation should be corrected, will provide notice and opportunity for submission of objections to the order, and may modify the order based on submitted objections.

(2) Notwithstanding paragraph (c)(3) or (4) of this section, the number of allowances in the compliance supplement pool for a State shall be treated under paragraph (c)(3) or (4) of this section as equaling the amount set forth in appendix D of this part for the State less the number of allowances allocated from the compliance supplement pool for the State to a unit in the State under paragraph (c)(9)(i) of this section or in an order under paragraph (d)(1) of this section. After issuance of an order under paragraph (d)(1) of this section, the Administrator will provide notice in the **Federal Register** of the reduction in the number of NO_X allowances in the compliance supplement pool for the State that are available for allocation under paragraph (c)(3) or (4) of this section.

(3) The Administrator will record an allocation in an order under paragraph (d)(1) of this section as soon as practicable after the issuance of the order, taking into account the period for submission of objections to the order and any subsequent modifications of the order.

(4) NO_X allowances allocated under paragraph (c)(9)(i) of this section or in an order under paragraph (d)(1) of this section may be deducted for compliance under § 97.54 for the control period in 2003 or 2004. Notwithstanding § 97.55(a), the Administrator will deduct as retired any NO_X allowance allocated under paragraph (c)(9)(i) of this section or in an order under paragraph (d)(1) of this section that is not deducted for compliance under

§ 97.54 for the control period in 2003 or 2004.

(5) NO_X allowances allocated under paragraph (c)(9)(i) of this section or in an order under paragraph (d)(1) of this section are treated as banked allowances in 2004 for purposes of §§ 97.54(f) and 97.55(b).

Appendix A to Part 97 [Amended]

4. Appendix A to part 97 is amended by:

a. Removing all entries for ''MI, 491 E. 48TH STREET'', ''MI, JB SIMS'', ''NC, CRAVEN COUNTY WOOD ENERGY'', and ''VA, STONE CONTAINER''; and

b. Removing two entries for ''VA, SEI BIRCHWOOD'' and adding in their place one entry for ''VA, SEI BIRCHWOOD''.

The revisions read as follows:

APPENDIX A TO PART 97—FINAL SECTION 126 RULE: EGU ALLOCATIONS, 2003–2007

State	Plant	Plant ____ id	Point ____ id	NO_X allocation for EGUs
* * *	* * *	*	*	*
VA	SEI BIRCHWOOD	12	1	160
* * *	* * *	*	*	*

Appendix B to Part 97 [Amended]

5. Appendix B to part 97 is amended by:

a. Removing all entries for ''IN, Allen, MICHELIN NORTH AMERICA, INC'', ''IN, Elkhart, SUPERIOR LAMINATING, INC'', ''IN, Kosciusko, THE DALTON FOUNDRIES INC'', ''KY, Carroll, DOW CORNING CORP'', ''KY, Shelby, ICHIKOH MANUFACTURING'', ''KY, Scott, TOYOTA MOTOR MFG USA INC'', and ''KY, Hardin, USAARMC & FORT KNOX''; removing the first entry for ''MI, Midland, DOW CHEMICAL USA''; removing all entries for ''MI, Wayne, NATIONAL STEEL CORP'', ''MI, Wayne, ROUGE STEEL CO'', ''NC, Gaston, FMC CORP-LITHIUM DIV. HWY 161'', ''NJ, Middlesex, FORD MOTOR COMPANY'', ''NJ, Bergen, GARDEN STATE PAPER CO'', ''NJ, Passiac, HOFFMAN LAROUCHE INC. C/O ENVIR''; ''WV, Grant, NORTH BRANCH POWER STATION'', and ''WV, Brooke, WHEELING-PITTSBURGH STEEL'';

b. Removing the fourth entry for ''MI, Ingham, MICHIGAN STATE UNIVERSITY'' and adding in its place an entry for ''MI, Ingham, MICHIGAN STATE UNIVERSITY'';

c. Removing the second entry for ''NC, Martin, WEYERHAEUSER PAPER CO. PLYMOUTH'' and adding in its place an entry for ''NC, Martin, WEYERHAEUSER PAPER CO. PLYMOUTH'';

d. Removing the entry for ''WV, Kanawha, DUPONT-BELLE'' and adding in its place an entry for ''WV, Kanawha, DUPONT-BELLE''; removing the entry for ''WV, Fayette, ELKEM METALS COMPANY L.P.-ALLOY PLANT'' and adding in its place an entry for ''WV, Fayette, ELKEM METALS COMPANY L.P.-ALLOY PLANT''; removing two entries for ''WV, Marshall, PPG INDUSTRIES, INC'' and adding in their place two entries for ''WV, Marshall, PPG INDUSTRIES, INC''; removing six entries for ''WV, Kanawha, RHONE-POLUENC'' and adding in their place three entries for ''WV, Kanawha, AVENTIS CROPSCIENCE''; removing the entry for ''WV, Kanawha, UNION CARBIDE-SOUTH CHARLESTON PLANT'' and adding in its place two entries for ''WV, Kanawha, UNION CARBIDE-SOUTH CHARLESTON PLANT'', removing seven entries for ''WV, Hancock, WEIRTON STEEL CORPORATION'' and adding in their place seven entries ''WV, Hancock, WEIRTON STEEL CORPORATION''; and

e. Adding in alphabetical order by State by plant and numerical order by point entries for ''NC, Haywood, BLUE RIDGE PAPER PRODUCTS'', and ''NC, Craven, WEYERHAEUSER COMPANY NEW BERN MILL''.

The revisions and additions read as follows:

APPENDIX B TO PART 97—FINAL SECTION 126 RULE: NON-EGU ALLOCATIONS, ALLOCATIONS, 2003–2007

State	County	Plant	Plant ID	Point ID	NO_X allocation for non-EGUs
* * *	* * *	* * *	*	*	*
MI	Ingham	MICHIGAN STATE UNIVERSITY	K3249	0056	73
* * *	* * *	* * *	*	*	*
NC	Haywood	BLUE RIDGE PAPER PRODUCTS INC.	0159	005	87
* * *	* * *	* * *	*	*	*
NC	Martin	WEYERHAEUSER PAPER CO. PLYMOUTH.	0069	XXX	25
NC	Craven	WEYERHAEUSER COMPANY NEW BERN MILL.	0104	XXX	72
* * *	* * *	* * *	*	*	*
WV	Kanawha	DUPONT-BELLE	00001	612	54
WV	Fayette	ELKEM METALS COMPANY L.P.—ALLOY PLANT.	00001	006	116
WV	Marshall	PPG INDUSTRIES, INC	00002	001	195
WV	Marshall	PPG INDUSTRIES, INC	00002	003	419

APPENDIX B TO PART 97—FINAL SECTION 126 RULE: NON-EGU ALLOCATIONS, ALLOCATIONS, 2003–2007—Continued

State	County	Plant	Plant ID	Point ID	NO_X allocation for non-EGUs
WV	Kanawha	AVENTIS CROPSCIENCE	00007	010	113
WV	Kanawha	AVENTIS CROPSCIENCE	00007	011	102
WV	Kanawha	AVENTIS CROPSCIENCE	00007	012	105
WV	Kanawha	UNION CARBIDE-SOUTH CHARLESTON PLANT.	00003	0B6	92
WV	Kanawha	UNION CARBIDE-SOUTH CHARLESTON PLANT.	00003	0B7	45
WV	Hancock	WEIRTON STEEL CORPORATION	00001	030	31
WV	Hancock	WEIRTON STEEL CORPORATION	00001	088	30
WV	Hancock	WEIRTON STEEL CORPORATION	00001	089	2
WV	Hancock	WEIRTON STEEL CORPORATION	00001	090	110
WV	Hancock	WEIRTON STEEL CORPORATION	00001	091	253
WV	Hancock	WEIRTON STEEL CORPORATION	00001	092	208
WV	Hancock	WEIRTON STEEL CORPORATION	00001	093	200

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG32

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period and Notice of Availability of the Draft Economic Analysis for Proposed Critical Habitat for the California Red-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; re-opening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designation of critical habitat for the California red-legged frog (*Rana aurora draytonii*). We are also providing notice of the re-opening of the comment period for the proposal to designate critical habitat for the California red-legged frog in order to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule.

DATES: We will accept public comments until January 22, 2001. In addition, we are planning on holding two public information meetings during this time. Refer to the Public Information Meeting section for dates, times, and locations of these meetings.

ADDRESSES: *Comment Submission*: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825.

2. You may send comments by electronic mail (e-mail) to: fw1crfch@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at ''www.r1.fws.gov'' or by writing to the Field Supervisor at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, and for information about Alameda, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Kern, Marin, Mariposa, Merced, Napa, Plumas, San Joaquin, San Mateo, Santa Clara, Sierra, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, and Yuba counties, contact Curt McCasland, Stephanie Brady or Patricia Foulk, at the above address (telephone 916/414–6600; facsimile 916/414–6710).

For information about Monterey, Los Angeles, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura counties, contact Diane Noda, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2394 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766; facsimile 805/644–3958).

For information about areas in the San Gabriel Mountains of Los Angeles County or Riverside and San Diego counties, contact Ken Berg, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The California red-legged frog (*Rana aurora draytonii*) is the largest native frog in the western United States. It is endemic to California and Baja California, Mexico. It is typically found from sea level to elevations of approximately 1,500 meters (5,000 feet). The California red-legged frog is one of two subspecies of the red-legged frog (R. aurora). For a detailed description of these two subspecies, see the Draft Recovery Plan for the California Red-Legged Frog (Service 2000) and references within that plan.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the California red-legged frog was listed as a threatened species on May 31, 1996 (61 FR 25813). Habitat loss and alteration, over-exploitation, and introduction of exotic predators were significant factors in the species' decline in the early- to mid-1900s. Habitat fragmentation, and continued colonization of existing habitat by nonnative species, may represent the most significant current threats to California red-legged frogs. We did not propose critical habitat at the time of the final rule to list the species because we