Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: September 7, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart PP—South Carolina

2. Section 62.10100 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(5) South Carolina Designated Facility Plan (Section 111(d)/129) for Hospital/Medical/Infectious Waste Incinerators, submitted on September 19, 2000, by the South Carolina Department of Health and Environmental Control.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart PP is amended by adding a new § 62.10170 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.10170 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 01–23604 Filed 9–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL–7058–2]

RIN 2060–AJ47

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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending 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 finalizes revised allocations 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 finalizes revised allocations for these units.

DATES: The final rule is effective October 22, 2001.

ADDRESSES: Docket No. A–97–43, containing supporting information used in developing today's final rule, is available for public inspection and copying between 8:00 a.m. and 4:00 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.

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 8:00 a.m. to 4:00 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.*

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 (NO_X SIP) call). The rulemaking docket for that rule contains information and analyses that were relied on in the January 2000 final rule. In promulgating the January 2000 proposed rule, EPA incorporated by reference the entire NO_X SIP call record. 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, certain documents associated with the NO_X SIP

call are located at *http://www.epa.gov/ttn/oarpg/otagsip.html.*

Outline

The information in this preamble is organized as follows:

I. Background

In January 2000, EPA took final action 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 EGUs and 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 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 per ozone season) for EGUs and non-EGUs. The EGU budget [1a] for each State is the larger of the total ozone season heat input for EGUs in the State for 1995 or 1996, increased by a growth rate through 2007, and multiplied by a control level of 0.15 lb. NO_X per mmBtu. The non-EGU budget [2] for each State is the non-EGU ozone season NO_X emissions in the State for 1995, increased by a growth rate through 2007, at a 60 percent control level. 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 finalizes revised allowance allocations 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 finalizes revised allocations for these units.

II. Final Rule Revisions

EPA is adopting 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 final rule, 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. As discussed below, EPA is revising the allocations for the units discussed in section II.A of today's preamble. To provide the revised allocations, EPA is using 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. This approach to obtaining allowances for the revised allocations is discussed in section II.B. In section II.C, EPA discusses 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 revising 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 did not consider, or request comment on, any other changes to part 97 or the January 2000 final rule. The December 2000 proposed rule was 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 Revising Units' Allocations

In today's final rule, EPA is revising allocations for the following units:

1. A group of units referred to as ''stranded'' units: Unit 0B7, plant 00003,

[1] This background is for the convenience of the reader to understand better the final revisions in sections II.B.2, II.C, and II.D below. EPA did not reconsider or request comment on any of the provisions in part 97, except to the extent discussed in preamble sections II.B.2, II.C, and II.D of the December 2000 proposed rule that initiated the instant rulemaking. *See* 65 FR 80398, 80402–4 (December 21, 2000).

[1a] For details on the budget calculations, see the January 18, 2000 **Federal Register** Notice.

[2] Ibid.

Union Carbide—South Charleston Plant, Kanawha County, West Virginia; and the Package Boiler at Weyerhaeuser Company Plymouth, plant 0069, Martin County and Power Boiler No. 2 at Weyerhaeuser Company New Bern Mill, plant 0104, Craven County in North Carolina;

2. SEI Birchwood, plant 12 (''Birchwood'');

3. A group of all West Virginia non-EGUs: Unit 612, plant 00001, Dupont-Belle, Kanawha County; Unit 006, plant 00001, Elkem Metals Company L.P.—Alloy Plant, Fayette County; Units 001 and 003, plant 00002, PPG Industries, Inc., Marshall County; Units 010, 011, and 012, plant 00007, Aventis Cropscience, Kanawha County; and Unit 0B6, plant 00003, Union Carbide—South Charleston Plant, Kanawha County;

4. Riley Bark Boiler, Plant 0159, Blue Ridge Paper Products Company, Haywood County, North Carolina (''Blue Ridge''); and

5. Unit 0056, plant K3249, Michigan State University, Ingham County, Michigan (''Michigan State'').

In the December 2000 proposed rule, EPA discussed in detail the circumstances concerning EPA's original determinations in the January 2000 final rule of the allocations for these units. 65 FR 80398, 80399–400 (December 21, 2000). EPA then evaluated these circumstances and provided the reasons for the proposed conclusion that the respective units' allocations in the January 2000 final rule should be revised. In particular, EPA proposed to find, for the stranded units and Birchwood, that the owners did not have a reasonable opportunity to comment on the allocations for their units. EPA proposed that the allocations should be revised based on corrected data. 65 FR 80400. With regard to all non-EGUs in West Virginia, EPA proposed to find that the owners of the units agreed that the allowances had been incorrectly distributed among the units due to the submission of erroneous data to EPA. EPA proposed that the allowances should be redistributed among those units to reflect the distribution agreed upon by those owners. *Id.* With regard to the Blue Ridge and Michigan State units, EPA proposed to find that it had misinterpreted the comments submitted by the units' owners and proposed that the allocations should be revised to reflect the correct interpretation of those comments. *Id.*

No commenters objected to the above-described proposed findings concerning any of the units or to the proposals to revise the units' allocations. Based on the reasons set forth in the December 2000 proposed rule and on the supporting record, EPA is today adopting as final these findings and conclusions.

In addition, one commenter requested that EPA address the status under the NO_X Budget Trading Program of two additional units not addressed in the December 2000 proposed rule. Specifically, the commenter requested that EPA determine that one unit for which an allocation is provided in the January 2000 final rule (*i.e.,* Point 004, plant 0006, International Paper—Franklin (formerly Union Camp Corp/Fine Paper Div), Isle of Wright County, Virginia) is not actually a NO_X Budget unit and is not subject to the requirements of the NO_X Budget Trading Program. The commenter also requested that EPA determine that a second unit that was not allocated allowances (*i.e.,* Unit 17, plant 0006, International Paper—Franklin, Isle of Wright County, Virginia) is actually a NO_X Budget unit and subject to the program and should receive an allocation.

With regard to the requested determination that the first unit is not a NO_X Budget unit, part 97 already provides a procedure for EPA to make such a determination without revising the regulations. Under § 97.42(g)(1), the Administrator may determine that a unit allocated allowances is not actually a NO_X Budget unit and that the Administrator will not record the allocation. Using this procedure, EPA has already issued final determinations that several other units are not NO_X Budget units. Since this procedure is available for the unit referenced by the commenter and since issues concerning this unit are in any event outside the scope of the December 2000 proposed rule, EPA is not determining in this rulemaking the status of this unit under the NO_X Budget Trading Program. Instead, EPA recently issued a determination under § 97.42(g)(1) concluding that the unit is not a NO_X Budget unit.

With regard to the status of the second unit referenced by this commenter, issues concerning this unit are outside the scope of the December 2000 proposed rule. EPA therefore is not addressing these issues, or taking any action, concerning the unit in this rulemaking.[3]

[3] Similarly, issues raised by another commenter, concerning the lack of allowance allocations for another unit (referred to as DTE River Rouge No. 1 LLC), are outside the scope of the December 2000 proposed rule, and EPA is not addressing, or taking any action concerning, this unit in this rulemaking.

B. Final Approach for Obtaining Allowances for Units' Revised Allocations

EPA's general approach to obtaining allowances for revised allocations for the identified units is to adopt methodologies that will result in the least disruption to the Federal NO_X Budget Trading Program, while maintaining unchanged the emission reductions required under the program and the existing State EGU and non-EGU budgets that reflect those reductions.

1. Final 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 proposed in the December 2000 proposal 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.

No commenters objected to this approach for revising the allocations for the West Virginia non-EGUs. For the above reasons, EPA adopts this approach.

2. Approach for Other Units

For the other units identified above, EPA proposed in the December 2000 proposal 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 were available from such non-NO_X Budget units, EPA proposed to use allowances from the compliance supplement pool. In the December 2000 proposal, EPA stated that there were sufficient allowances available for non-NO_X Budget units to provide allowances for all of the identified units except the Birchwood unit. Thus, under the proposal, non-NO_X Budget units would provide all additional allowances for all the identified units except the Birchwood unit, which would receive

some but not all of its additional allowances from non-NO_X Budget units.

The most accurate approach for providing revised allocations for the ''stranded'', Birchwood, Blue Ridge, and Michigan State units would be to recreate the allocations that would have resulted if EPA had originally used the correct data for them when the allocations were established in the January 2000 final rule. This approach 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.

This is because, if the two ''stranded'' units [4] 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. 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.

Consequently, if EPA were to take the approach of recreating the original allocations based on the correct data, the allocations of all units in each entire budget sector would be revised. Further, because there would then be more units receiving allocations than in the original allocation process, each unit (other than the two ''stranded'' units and the Birchwood, Blue Ridge, and Michigan State units) would have a reduced allocation.

As explained in the December 2000 proposal, EPA believes that this 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. No commenters supported this approach to providing revised allocations for the ''stranded'', Birchwood, Blue Ridge, and Michigan State units. For the above reasons, EPA concludes that it should adopt an approach that is less disruptive to the Federal NO_X Budget Trading Program and the units in the program than a full reallocation of allowances to all units in each, entire budget sector.

i. Use of allocations to non-NO_X Budget units.

EPA stated in the December 2000 proposed rule 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. 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).[5] EPA concluded in the December 2000 proposed rule, that revising NO_X Budget units' allocations using allowances mistakenly 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. *See* 65 FR 80402.

Two commenters claimed that revising allocations using allowances made available through determinations under § 97.42(g)(1) would disrupt compliance planning. These commenters note that, under the existing regulations, allowances originally allocated to units determined not to be NO_X Budget units are added to the allocation set-aside for new units. One of the commenters claims that ''it is reasonable that companies planning'' new units ''would have factored into their compliance plans assumptions concerning the availability * * * of allowances freed up'' under § 97.42(g) determinations, including those determinations ''made several months ago.''

However, 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. EPA's intent, of course, was not to make errors resulting in allocations to non-NO_X Budget units, and there was no reason for owners and operators to assume that there would be errors or rely on such an assumption. On the contrary, since EPA stated that the mechanism for correcting such errors would rarely be 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.

Moreover, the commenter speculated, without providing any support, that owners and operators changed their compliance planning for new units during the few months between June-August 2000, when the bulk of the § 97.42(g) determinations were issued, and December 2000 when EPA issued the proposal to revise allocations for the identified units using allowances from these § 97.42(g) determinations. For example, the commenter provides no evidence that any owner or operator incurred expenses, or made decisions, concerning compliance of its units on the assumption that allowances would be available for the units under § 97.42(g). The commenter's unsupported speculation warrants little or no weight. Further, the relatively short period during which the owners and operators could have thought that such allowances would be available was unlikely to result in any significant changes in compliance planning. On balance, EPA concludes that owners and operators did not reasonably rely, to any significant extent, on the availability of allowances under § 97.42(g) for new units.

The commenters objecting to using non-NO_X Budget units' allowances to provide allowances to the two ''stranded'' units and the Birchwood, Blue Ridge, and Michigan State units also argued that EPA should increase the State trading budgets by the amounts of the additional allowances to be provided to the identified units. However, the commenters ignore the fact that if, in setting the State EGU and non-EGU budgets, EPA had originally used the correct data concerning the *non-NO_X Budget units* mistakenly allocated allowances, the State EGU or non-EGU budgets in which the non-NO_X Budget units were included in the

[4] The third ''stranded'' unit is a West Virginia non-EGU, whose revised allocation is addressed above in preamble section II.B.1.

[5] One commenter expressed concern that, since the rule states that the allocation set-aside is established as equaling 5% of the State EGU and non-EGU budgets, the allowances originally allocated to non-NO_X Budget units could not be added to the allocation set-aside. However, § 97.42(d)(1) states what the initial amount of the allocation set-aside will be and does not preclude or contradict § 97.42(g)(2), which states specifically that other allowances may be subsequently added to the set-aside.

January 2000 final rule would have been lower and therefore the total number of allowances allocated under those budgets would have been less.

This is because all of the non-NO_X Budget units mistakenly allocated allowances had heat input values that were used to calculate the respective State EGU or non-EGU budgets. For example, the State EGU budget for Michigan was based on the total heat input for all large EGUs in 1995, and each of the non-NO_X Budget units originally treated as large EGUs in Michigan [6] had heat input values in 1995 that were included in the State EGU budget. Also, the State EGU budgets for North Carolina and Virginia [7] were based on the total heat input for large EGUs in 1996, and each of the non-NO_X Budget units originally treated as large EGUs in those States [8] had heat input values in 1995 that were included in the respective State EGU budget. Similarly, the State non-EGU budgets were based on total heat input for large non-EGUs in the respective States in 1995, and all the non-NO_X Budget units originally treated as large non-EGUs in those States had heat input values in 1995 that were included in the respective State non-EGU budget.[9] Although the treatment of the non-NO_X Budget units inflated somewhat the State EGU or non-EGU budgets, EPA did not reduce these budgets when it issued determinations removing the non-NO_X budget units from the trading program. Instead, EPA took back the allowances allocated to these non-NO_X budget units and provided in part 97 that these allowances would be added to the set-aside for new units in the respective States.

In short, EPA's approach concerning the non-NO_X Budget units already somewhat inflated the State EGU or non-EGU budgets. The commenters' approach would compound this result by further increasing State EGU or non-EGU budgets to provide additional allowances to the identified NO_X Budget units. In addition, under the commenter's approach of further increasing the EGU or non-EGU budgets of the States involved (*i.e.,* Michigan, North Carolina, and Virginia), those States' budgets would be calculated in a different manner (*i.e.,* with amounts of allowances added to the amounts derived using the generally applied methodology for calculating budgets) than any other States' budgets. EPA maintains that it is reasonable to use the allowances that were mistakenly allocated to non-NO_X Budget units, and that somewhat inflated certain State EGU or non-EGU budgets, to provide additional allowances to the identified NO_X Budget units, rather than further increasing those State EGU or non-EGU budgets.

According to one of the commenters supporting the approach of increasing the State trading budgets to provide revised allocations, the State trading budget (for Virginia) would have been higher if EPA had originally used the correct historical heat input data for one of the identified units (the Birchwood unit). However, this comment is based on an incorrect factual premise.

Actually, Virginia's trading budget was based on the higher of total EGU heat input in 1995 or 1996, the 1996 total was the higher value, and the Birchwood unit did not commence operation until after the 1996 control period. The incorrect heat input data submitted to, and used by, EPA to set Virginia's EGU budget showed heat input for the Birchwood unit for the 1996 control period. That incorrect value was used to calculate the Virginia budget. Thus, if EPA originally had been provided and had used the correct heat input data for the Birchwood unit, Virginia's EGU budget would be *lower* than the amount in the January 2000 final rule. The commenter's approach would result in further increase of that budget and would result in Virginia's budget being calculated in a manner inconsistent with other States' budgets.

In summary, EPA concludes that using non-NO_X Budget units' allowances has little or no disruptive impact on units in the NO_X Budget Trading Program. EPA also maintains that this is a reasonable approach for providing revised allocations for the identified units.

As discussed above, after issuance of the December 2000 proposed rule and during the comment period on that proposal, a commenter informed EPA of a unit, not previously identified, that was allocated allowances in the January 2000 final rule but that is not actually a NO_X Budget unit. The issues concerning the status of this unit (*i.e.,* Point 004, plant 0006, International Paper—Franklin (formerly Union Camp Corp/Fine Paper Div), Isle of Wright County, Virginia) as a NO_X Budget unit were outside the scope of December 2000 proposed rule and this rulemaking, and there is a separate procedure under § 97.42(g)(1) for addressing such issues. EPA therefore issued a letter under § 97.42(g)(1) on August 1, 2001, in which EPA determined that the unit was not actually a NO_X Budget unit. Further, EPA stated in the letter that, consistent with § 97.42(g)(1)(i), the 262 allowances allocated to the unit would not be recorded for the unit.

Consequently, there are 262 additional allowances that were mistakenly allocated to a non-NO_X Budget unit in Virginia and that are available under the approach proposed in the December 2000 proposal for providing additional allowances to the Birchwood unit. As a result, there are sufficient allowances available from non-NO_X Budget units in Virginia to provide the full amount of additional allowances necessary for the Birchwood unit.[10]

ii. Use of compliance supplement pool or allocation set-aside allowances.

In the December 2000 proposed rule, EPA stated that using allowances from the State compliance supplement pool was the next least disruptive method of providing allowances for the revised allocations, after the use of non-NO_X Budget units' allowances.EPA explained that use of the compliance supplement pool allowances would be less disruptive than using allowances from the allocation set-aside, which is used for allocations to new units. *See* 65 FR 80403.

However, as discussed above, EPA has determined that there are sufficient allowances available from non-NO_X Budget units to provide allowances for all of the identified units, including the Birchwood unit. There is no need to use the compliance supplement pool for any

[6] These units are 491 E 48th Street Units −7 and −8, J B Sims Unit 65, and James De Young Unit 5.

[7] These units are Craven County Wood Energy Unit ST_RGY in North Carolina and Stone Container Unit ST_ner in Virginia.

[8] These units are 491 E 48th Street Units −7 and −8, J B Sims Unit 65, and James De Young Unit 5.

[9] These units are: Points 0201 through 0204 and 0205, plant A7809, National Steel Corp, Wayne County, Michigan; Points 0218 and 0219, plant A8640, Rouge Steel Corp., Wayne County, Michigan; Point 0084, plant A4033, Dow Chemical, Midland County, Michigan; Point 030, plant 0078, FMC Corp—Lithium Div. Hwy 161, Gaston County, North Carolina; Point 007, plant 0069, Weyerhaeuser Co. Plymouth, Martin County, North Carolina; and Point 004, plant 0006, International Paper—Franklin (formerly Union Camp Corp/Fine Paper Div), Isle of Wright County, Virginia.

[10] Although, at the time of the December 2000 proposal EPA was not aware that Point 004, plant 0006, International Paper—Franklin (formerly Union Camp Corp/Fine Paper Div), Isle of Wright County, Virginia was a non-NO_X Budget unit and that allowances allocated to the unit might be available to use for the Birchwood unit, such use of these allowances is squarely within the scope of the December 2000 proposal. In that proposal, EPA proposed generally to provide additional allowances to units warranting additional allocations using allowances allocated to units that were non-NO_X Budget units. 65 FR 80401; *see also* 65 FR 80404 (proposing to modify § 97.42(g) to establish a general procedure for using non-NO_X Budget units' allowances to provide additional allowances to individual NO_X Budget units warranting increased allocations).

State in which the identified units are located to provide any allowances needed for the units' revised allocations. For the reasons discussed below, EPA concludes that non-NO_X Budget units should provide all additional allowances for all the identified units.

First, EPA maintains that use of non-NO_X Budget units' allowances is less disruptive to the NO_X Budget Trading Program and units in the program than using allowances from the compliance supplement pool. The purpose of the pool is to provide additional allowances for 2003 and 2004 above and beyond the State EGU and non-EGU budgets 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). The compliance deadline is feasible without the compliance supplement pool. However, the additional allowances in this pool will ensure that any units unable to install NO_X control equipment (e.g., because of concerns for reliability of electric generation during a shutdown for installation) in 2003 or 2004 are able to obtain allowances in the meantime. See 63 FR 57428.

The compliance supplement pool allowances are initially distributed to units that make early NO_X emission reductions. 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. 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).

However, EPA recognizes that using some of the compliance supplement pool allowances for revised allocations would reduce the amount of allowances potentially available for early reductions. Each State has a fixed number of allowances in the State compliance supplement pool. *See* 65 FR 2767 (Appendix D showing compliance supplement pool for each State). Using the pool would make fewer allowances potentially available for early reductions and so would be more disruptive to the Federal NO_X Budget Trading Program and other units than using non-NO_X Budget unit allowances.

Second, using allowances from the allocation set-aside, would also be more disruptive than using non-NO_X Budget unit allowances. The allocation set-aside is allocated to new units for years before they have the necessary historical data to be treated as existing units in future allocation updating. The allocation set-aside therefore plays an important role of integrating new units into the NO_X Budget Trading Program. EPA set the allocation set-aside at 5% of the State EGU and non-EGU budgets so that the pool would be large enough to accommodate all new sources. EPA is concerned that using allowances from the allocation set-aside to revise the identified units' allocations may result in fewer allowances being available for individual new units. *See* 65 FR 80403. EPA notes that no commenter indicated a preference for using allowances from the allocation set-aside (or from the compliance supplement pool), in lieu of non-NO_X Budget units' allowances.

In summary, EPA concludes that the compliance supplement pool or allocation set-aside allowances should not be used to obtaining allowances for any of the identified units.

C. Amounts of Allowances for Units' Revised Allocations

In the December 2000 proposed rule, EPA proposed the amounts of allowances to use for the units' revised allocations. For the West Virginia non-EGUs (including one ''stranded'' unit), EPA proposed to use the allocations requested by all the owners of those units. 65 FR 80403. EPA did not receive any comments objecting to these revised allocations. For the reasons set forth in the proposed-rule preamble, today's final rule adopts these revised allocations.

EPA also proposed in the December 2000 proposal 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. Specifically, as discussed above, the allocations to each EGU in Appendix A or non-EGU in Appendix B are calculated by multiplying the unit's historical heat input by an initial average emission rate (0.15 lb/mmBtu for EGUs and 0.17 lb/mmBtu for non-EGUs) and then adjusting the results so that the total of the allocations to all EGUs or all non-EGUs in the unit's State equals 95 percent of the State EGU budget or State non-EGU budget respectively. Thus, all EGU allocations for the State have a common underlying average emission rate, and all non-EGU allocations for the State have a common underlying average emission rate, which may differ from that for EGU allocations.

In calculating allocations for the ''stranded'', Birchwood, Blue Ridge, and Michigan State units, EPA proposed to use the underlying average emission rate for units in the State budget sector in the same State as the respective unit. EPA proposed to multiply each unit's historical heat input (calculated under § 97.42(a))by the appropriate underlying average emission rate. See 40 CFR 97.42(a) (establishing 1995–1998 as the historical period for 2003–2007 allocations); and Memorandum on Calculation of Revised Allocations, Document No. XIV–B–01(showing how the revised allocations are calculated and attaching the supporting documentation of the heat input data).

EPA did not receive any comments objecting to the proposed methodology for calculating the revised allocations. One commenter stated that the revised allocation listed in the proposed rule language for one unit (Unit 005, plant 0159, Blue Ridge Paper Products Inc., Haywood County, North Carolina) was incorrect. In considering the comment, EPA found that the amount of the allocation as reflected in the Memorandum on Calculation of Revised Allocations in the record was different than the number listed in the proposed rule language for the unit. EPA agrees that the amount in the memorandum is correct and that the number in the proposed rule is wrong. In today's final rule, EPA is correcting the allocation for the Blue Ridge unit to be consistent with the memorandum in the record and is otherwise adopting the revised allocations in the proposed rule, based on the reasons set forth above and on the supporting record.

D. Changes to regulatory Text.

In today's final rule, EPA is adopting the following revisions to the language of specific sections of part 97.

1. Appendices A and B Revisions.

EPA is adopting several rule revisions to implement the above-described revised allocations and approach for obtaining allowances for those allocations. First, today's final rule revises Appendices A and B to part 97 in order to include revised allocation amounts for the identified units as discussed above. In addition, when Appendix A or B incorrectly references an identified unit or fails to list the unit at all, EPA is correcting these errors.

Second, today's final rule revises Appendices A and B to remove allocations for units that EPA has previously determined not to be NO_X Budget units. Included in these revisions is the removal of the unit, noted above, that EPA recently determined was a non- NO_X Budget unit for which allowances should not be recorded.[11] As discussed above, 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 final determinations that 4 units listed in Appendix A and 28 units listed in Appendix B are not NO_X Budget units and will not have allocations recorded in their accounts. No commenters on the December 2000 proposed rule objected to reflecting final determinations under § 97.42(g) in revisions to the appendices. Appendix A. Today's final rule merely reflects, in regulatory text, these final determinations.

2. Section 97.42(g) revisions

In the December 2000 proposal, EPA proposed revisions to § 97.42 (allocation procedures) that would authorize the Administrator to issue orders correcting other units' allocations, where correction was warranted, using allowances allocated to units determined not to be NO_X Budget units. Under the proposed revisions, the Administrator could 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 warranted correction of such unit's allocation. The Administrator could 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), was less than the number of allowances provided under § 97.42(a) through (d) and that equitable considerations warranted correction of such unit's allocation. Moreover, in the order, the Administrator could determine that allowances mistakenly allocated to non-NO_X Budget units located in the same State as the unit would be used to supplement, and thereby correct, the unit's actual allocation. EPA stated that the use of orders—rather than rule revisions—to make unit-specific allocations from allocations to non- NO_X Budget units would allow for much more expeditious correction of a unit's allocations where correction was warranted and still provide opportunity for interested parties to submit objections.

Several commenters objected to the proposed revision of § 97.42(g) on the ground that, among other things, State budgets should be increased to provide additional allowances for units whose original allocations were incorrect and warranted an increase. The commenters also claimed that the proposed revision provided fewer procedural protections for participants and other members of the public than provided through a rulemaking proceeding. As discussed above, EPA concludes above that there is no basis for increasing the State budgets to provide additional allowances for the units specifically identified in this final rule as warranting increased allocations. Further, additional procedural protections (if any were necessary) could be provided in a final rule. However, EPA has decided that the most prudent course is to retain—at this time—the flexibility to address case-by-case the issue of how to obtain additional allowances for any other units that EPA may determine in the future warrant increased allocations, rather than deciding that question on a generic basis now by adopting the proposed revisions. EPA is therefore not taking action in today's final rule on the proposed revisions to § 97.42(g).[12]

3. Section 97.43 Revisions

In the December 2000 proposal, EPA proposed alternative revisions that would provide allowances from the State compliance supplement pool for the Birchwood unit. EPA proposed to revise § 97.43 to add a new paragraph (c)(9) that would specifically allocate to the Birchwood unit in Virginia 725 allowances from the Virginia compliance supplement pool. The new provisions also would address the interaction of this unit-specific allocation with other provisions of the rule concerning compliance supplement pool allowances. As discussed above, there are now sufficient non- NO_X Budget unit allowances to satisfy the revised allocation for the Birchwood unit. The proposed new paragraph (c)(9) is therefore unnecessary, and EPA has decided not to adopt that revision.

In the December 2000 proposal, EPA also proposed to revise § 97.43 to add a new paragraph (d) that would authorize the Administrator, on a generic basis, 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 was less than the number of allowances provided under § 97.42(a) through (d) and that equitable considerations warrant correction of such allocation. The Administrator could also determine in the order that allowances in the compliance supplement pool of the State where the unit is located would be used to supplement, and thereby correct, the unit's allocation.

Several commenters objected to the proposed new paragraph (d) of § 97.43 on the ground that, among other things, State budgets should be increased to provide additional allowances for units whose original allocations were incorrect and warranted an increase. The commenters also claimed that the proposed revision provided fewer procedural protections for participants and other members of the public than provided through a rulemaking proceeding. As discussed above, EPA concludes above that there is no basis for increasing the State budgets to provide additional allowances for the units specifically identified in this final rule as warranting increased allocations. Further, additional procedural protections (if any were necessary) could be provided in a final rule. However, EPA has decided that the most prudent course is to retain—at this

[11] Removal of this unit was not specifically referenced in the December 2000 proposed rule because the determination that the unit was a non-NO_X Budget unit was not issued until August 1, 2001. However, EPA maintains that there is good cause under section 553(b)(3)(B) of the Administrative Procedure Act for finalizing this revision without notice and comment. The August 1, 2001 determination is final, and the revision merely ensures that Appendix B reflects this final determination. Even without such revision, the final determination would be effective and the allowances originally allocated to the unit would be available for allocation in today's final rule to the Birchwood unit. Notice and comment are therefore unnecessary.

[12] One commenter that supports the proposed revisions to § 97.42(g) and § 97.43 suggests that the date for compliance under the January 2000 final rule with the requirement to hold allowances should be extended to May 1, 2004. EPA is not addressing this issue in this final rule since the issue is beyond the scope of the December 2000 proposed rule and the rulemaking.

time—the flexibility to address on a case-by-case basis the issue of how to obtain additional allowances for any units that EPA may determine in the future warrant increased allocations, rather than deciding that question on a generic basis now by adopting the proposed revisions. EPA is therefore not taking action in today's final rule on the proposed revisions to § 97.43.

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 final 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 final 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, the final rule either increases the number of allowances allocated and thus reduces the burden of the program or does not change the number of allowances allocated and thus does not change the program burden. To the extent the final rule removes certain units from the allocation tables, EPA has already issued final orders removing the allocations for these units, and the final 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 today's final rule, and the owners of that unit, agreeing that the unit's original allocation was erroneously overstated, requested EPA to make the reduction.

For these reasons, I certify that today's final rule will 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), Public Law 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 the 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 final 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 final 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 final rule. Similarly, EPA has determined that today's final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of sections 202, 203, or 205 of the UMRA.

D. Paperwork Reduction Act

Today's final 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 final 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 final 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.

Today's final 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'' are 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.''

Today's final 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.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This final rule does not anticipate substantial compliance cost expenditures by tribal governments nor substantial direct effects on cultural practices of tribes. Thus, Executive Order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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 final rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et.seq. (CRA), as added by the Small Business Regulatory Enforcement Fairness Act of 1966, does not apply because this action is not a rule, for purposes of 5 U.S.C. 8014(3). This action qualifies as a rule of particular applicability because its application is limited to specifically named entities, and as such, it is exempt from the CRA.

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: September 14, 2001.

Christine Todd Whitman,

Administrator.

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

PART 97—[AMENDED]

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

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

APPENDIX A—[AMENDED]

2. Appendix A to part 97 is amended by:

a. Removing all entries for ''MI, 491 E. 48 TH 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 addition 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	305
*	* * * * *	*		*

APPENDIX B—[AMENDED]

3. 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''; removing the second entry for ''VA, Isle of Wright, INTERNATIONAL PAPER—FRANKLIN (FORMERLY UNION CAMP CORP/FINE PAPER DIV)'';

b. Revising the fourth entry for ''MI, Ingham, MICHIGAN STATE UNIVERSITY'';

c. Revising the second entry for ''NC, Martin, WEYERHAEUSER PAPER CO. PLYMOUTH'';

d. Revising the entries for ''WV, Kanawha, DUPONT—BELLE''; and ''WV, Fayette, ELKEM METALS COMPANY L.P.—ALLOY PLANT''; revising two entries for ''WV, Marshall, PPG INDUSTRIES, INC''; revising the three entries for ''WV, Kanawha, AVENTIS CROPSCIENCE''; and revising the seven entries for ''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'', ''NC, Craven, WEYERHAEUSER COMPANY NEW BERN MILL'', and ''WV, Kanawha, UNION CARBIDE—SOUTH CHARLESTON PLANT''.

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	129
*	*	* * *	*		*
NC	Martin	WEYERHAEUSER COMPANY PLYMOUTH	0069	009	25
NC	Craven	WEYERHAEUSER COMPANY NEW BERN MILL	0104	006	72
*	*	* * *	*		*
WV	Kanawha	DUPONT—BELLE	00001	612	54
WV	Fayette	ELKEM METALS COMPANY L.P.—ALLOY P PLANT	00001	006	116
WV	Marshall	PPG INDUSTRIES, INC	00002	001	195
WV	Marshall	PPG INDUSTRIES, INC	00002	003	419
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	0003	0B6	92
WV	Kanawha	UNION CARBIDE—SOUTH CHARLESTON PLANT	0003	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

[FR Doc. 01–23476 Filed 9–20–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301162; FRL–6797–2]

RIN 2070–AB78

Propamocarb Hydrochloride; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises time-limited tolerances for residues of propamocarb hydrochloride in or on tomato and tomato, paste and revokes the time limited tolerance for residues of propamocarb hydrochloride in or on tomato, puree. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomatoes. This regulation revises maximum permissible levels for residues of propamocarb hydrochloride in these food commodities. The revised tolerances will expire and are revoked on December 31, 2003.

DATES: This regulation is effective September 21, 2001. Objections and requests for hearings, identified by docket control number OPP–301162, must be received by EPA on or before November 20, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301162 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301162. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is revising the tolerances for residues of the fungicide propamocarb hydrochloride, propyl [3-(dimethylamino)propyl] carbamate monohydrochloride, by increasing the residue levels in or on tomato and tomato, paste, to 2 and 5 ppm, respectively, and removing the level for tomato, puree. These revised tolerances will expire and are revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section