

PART 120—SECURITY OF PASSENGER VESSELS

12. The authority citation for part 120 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

13. In § 120.110, revise the definitions of “high seas” to read as follows:

§ 120.110 Definitions.

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High seas means the waters defined in § 2.32 (d) of this chapter.

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PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

14. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

15. Add § 165.9 to read as follows:

§ 165.9 Geographic application of limited and controlled access areas and regulated navigation areas.

(a) *General.* The geographic application of the limited and controlled access areas and regulated navigation areas in this part are determined based on the statutory authority under which each is created.

(b) *Safety zones and regulated navigation areas.* These zones and areas are created under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.* Safety zones established under 33 U.S.C. 1226 and regulated navigation areas may be established in waters of the United States as defined in § 2.38 of this chapter including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(c) *Security zones.* These zones have two sources of authority—the Ports and Waterways Safety Act, 33 U.S.C. 1226, and the Magnuson Act, 50 U.S.C. 191. Security zones established under 33 U.S.C. 1226 may be established in waters of the United States as defined in § 2.38 of this chapter including the territorial sea to a seaward limit of 12 nautical miles from the baseline. Security zones established under the Magnuson Act, 50 U.S.C. 191, may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea out to a seaward limit of 3 n.m. from the baseline. Security zones established under the Ports and Waterways Safety Act and the Magnuson Act may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter,

including the territorial sea to a seaward limit of 3 n.m. from the baseline.

(d) *Naval vessel protection zones.* These zones are issued under the authority of 14 U.S.C. 91 and 633 and may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 3 n.m. from the baseline.

Title 46—Shipping**PART 7—BOUNDARY LINES**

16. The authority citation for part 7 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151; 49 CFR 1.46.

17. Revise § 7.105 to read as follows:

§ 7.105 Marquesas Keys, FL to Rio Grande, TX.

A line drawn from Marquesas Keys, Florida at approximate position latitude 24°47.5' N, longitude 82°11.2' W; along the 12-mile line which marks the seaward limits of the territorial sea (as defined in 33 CFR 2.22 (a)(1)) to Rio Grande, Texas at approximate position latitude 25°58.6' N, longitude 96°55.5' W.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

18. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

19. In § 28.50, revise the definitions of “boundary lines” and “coastline”, to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Boundary lines means the lines described in part 7 of this chapter. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets, and rivers. In some areas, they are along the 12-mile line that marks the seaward limits of the territorial sea and, in other areas, they come ashore.

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Coastline means the territorial sea baseline as defined in 33 CFR 2.20.

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Dated: August 6, 2002.

Calvin M. Lederer,

Acting Chief Counsel, U.S. Coast Guard.

[FR Doc. 02–20481 Filed 8–13–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[TN–238–200112; FRL–7258–9]

Approval and Promulgation of Implementation Plans: Tennessee: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee on November 7, 2000, with additional material submitted on January 11, 2001, and October 4, 2001. This revision responds to the EPA's regulation 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,” otherwise known as the “NO_x SIP Call.” This revision establishes and requires a nitrogen oxides (NO_x) allowance trading program for large electric generating and industrial units, and reductions for cement kilns, beginning in 2004. The intended effect of this SIP revision is to reduce emissions of NO_x in order to help attain the national ambient air quality standard for ozone. EPA is proposing to approve Tennessee's NO_x Reduction and Trading Program, with one exception, because it meets the requirements of the Phase I NO_x SIP Call that will significantly reduce ozone transport in the eastern United States. The exception refers to Section 96.40 State trading program budget. Tennessee revised the model rule to allow for the allocation of additional allowances to NO_x budget units that have been generated through NO_x emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee's NO_x Reduction and Trading Program with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by replacing or revising the unapprovable language.

DATES: Written comments must be received on or before September 13, 2002.

ADDRESSES: All comments should be addressed to: Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Tennessee Department of Environment and Conservation, L & C Annex, 401 Church Street, Nashville, Tennessee 37243.

FOR FURTHER INFORMATION CONTACT:

Steven M. Scofield, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION: On November 7, 2000, the Tennessee Department of Environment and Conservation (TDEC) submitted a draft NO_x emission control rule to the EPA for pre-adoption review, requesting parallel processing to the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_x SIP Call. After adoption by the Tennessee Air Pollution Control Board, all rule revisions in Tennessee must be sent to the Secretary of State. Rule revisions become State-effective upon certification by the Secretary of State. Tennessee submitted State-effective rule revisions on October 4, 2001. The revisions comply with the requirements of the Phase I NO_x SIP Call with one exception regarding deficiencies in Section 96.40 State trading program budget. Included in this document are new rules 1200-3-27-.04 STANDARDS FOR CEMENT KILNS and 1200-3-27-.06 NO_x BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR part 96). The information in this proposal is organized as follows:

I. EPA's Action

- A. What action is EPA proposing today?
- B. Why is EPA proposing this action?
- C. What are the NO_x SIP Call general requirements?
- D. What is EPA's NO_x budget and allowance trading program?
- E. What guidance did EPA use to evaluate Tennessee's submittal?

F. What is the result of EPA's evaluation of Tennessee's program?

II. Tennessee's Control of NO_x Emissions

- A. When did Tennessee submit the SIP revision to EPA in response to the NO_x SIP Call?
- B. What is the Tennessee NO_x Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. What is the New Source Set-Aside program?

III. Proposed Action

IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing to conditionally approve revisions to Tennessee's SIP concerning the adoption of its NO_x Reduction and Trading Program, submitted for parallel processing on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001.

B. Why Is EPA Proposing This Action?

EPA is proposing this action because Tennessee's NO_x Reduction and Trading Program regulations meet the requirements of the Phase I NO_x SIP Call with one exception. The exception refers to deficiencies in Section 96.40 State trading program budget. Tennessee revised the model rule to allow for the allocation of additional allowances to NO_x budget units that have been generated through NO_x emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. In a letter dated June 25, 2002, EPA informed Tennessee of the deficiencies in Section 96.40 and how the State could correct these deficiencies. In the letter EPA also required the State to commit to correct the deficiencies within 12 months. Therefore, EPA is proposing to approve Tennessee's NO_x Reduction and Trading Program, including a rule for cement kilns, with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget.

C. What Are the NO_x SIP Call General Requirements?

On October 27, 1998, EPA published a final rule 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," otherwise known as the "NO_x SIP Call."

See 63 FR 57356. The NO_x SIP Call requires 22 States and the District of Columbia to meet statewide NO_x emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States.

EPA identified NO_x emission reductions by source category that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion engines, and cement kilns. EPA determined state-wide NO_x emission budgets based on the implementation of these cost-effective controls for each affected jurisdiction to be met by the year 2007. Internal combustion engines are not addressed by Tennessee in this response to Phase I, but will be in Phase II. In the NO_x SIP Call notice, EPA suggested that imposing statewide NO_x emissions caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost-effective means for states to meet their NO_x budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_x per million British thermal units (lb. NO_x/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_x SIP Call state budgets also assumed on average a 30 percent NO_x reduction from cement kilns, and a 60 percent reduction from industrial boilers and combustion. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or incomplete, at units with actual emissions greater than one ton per day. However, the NO_x SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets.

To assist the states in their efforts to meet the SIP Call, the NO_x SIP Call final rulemaking notice included a model NO_x allowance trading regulation, called "NO_x Budget Trading Program for State Implementation Plans," (40 CFR part 96), that could be used by states to develop their regulations. The NO_x SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that

would be administered by the EPA. *See* 63 FR 57458–57459.

There were several periods during which EPA received comments on various aspects of the NO_x SIP Call emissions inventories. On March 2, 2000, EPA published additional technical amendments to the NO_x SIP Call in the **Federal Register** (65 FR 11222). On March 3, 2000, the D.C. Circuit issued its decision on the NO_x SIP Call ruling in favor of EPA on all the major issues. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). The DC Circuit Court denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: The definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO_x SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups and a number of upwind states from the D.C. Circuit's ruling on EPA's NO_x SIP Call rule.

EPA published a proposal that addresses the remanded portion of the NO_x SIP Call Rule on February 22, 2002 (67 FR 8396). Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emission budget. On April 11, 2000, in response to the Court's decision, EPA notified Tennessee of the maximum amount of NO_x emissions allowed for the State during the ozone season. This emission budget reflected adjustments to Tennessee's NO_x emission budget to reflect the Court's decision regarding internal combustion engines and cogeneration facilities. Although the Court did not order EPA to modify Tennessee's budget, the EPA believes these adjustments are consistent with the Court's decision.

D. What Is EPA's NO_x Budget and Allowance Trading Program?

EPA's model NO_x budget and allowance trading rule, 40 CFR part 96, sets forth a NO_x emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998, **Federal Register** notice contains a full description of the EPA's model NO_x budget trading program. *See* 63 FR 57514–57538 and 40 CFR part 96.

Air emissions trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allowances for each source covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_x.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

E. What Guidance Did EPA Use To Evaluate Tennessee's Submittal?

The final NO_x SIP Call rule included a model NO_x budget trading program regulation. *See* 40 CFR part 96. EPA used the model rule and 40 CFR 51.121–51.122 to evaluate Tennessee's NO_x reduction and trading program.

F. What Is the Result of EPA's Evaluation of Tennessee's Program?

EPA has evaluated Tennessee's October 4, 2001, SIP submittal and finds it approvable with conditions. The Tennessee NO_x reduction and trading program is consistent with EPA's guidance and meets the requirements of the Phase I NO_x SIP Call with one exception regarding deficiencies in Section 96.40 State trading program budget. EPA finds the NO_x control measures in Tennessee's NO_x reduction and trading program, including the cement kiln rule, approvable.

The October 4, 2001, submittal will strengthen Tennessee's SIP for reducing ground level ozone by providing NO_x

reductions beginning in 2004. Also, EPA finds that the submittal contained the information necessary to demonstrate that Tennessee has the legal authority to implement and enforce the control measures, and to demonstrate their appropriate distribution of the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements will be met.

II. Tennessee's Control of NO_x Emissions

A. When Did Tennessee Submit the SIP Revision to EPA in Response to the NO_x SIP Call?

On November 7, 2000, the Tennessee Department of Environment and Conservation submitted a draft NO_x emission control rule to the EPA for pre-adoption review, requesting parallel processing to the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_x SIP Call. After adoption by the Tennessee Air Pollution Control Board, all rule revisions in Tennessee must be sent to the Secretary of State. Rule revisions become State-effective upon certification by the Secretary of State. Tennessee submitted State-effective rule revisions on October 4, 2001.

B. What Is Tennessee's NO_x Budget Trading Program?

Tennessee's rule, as in the model rule, allows the large EGUs, boilers and turbines to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO_x burners, mid-kiln system firings or technology that achieves the same emission decreases. Tennessee's SIP revision to meet the requirements of the NO_x SIP Call consists of new rules 1200–3–27–.04 STANDARDS FOR CEMENT KILNS and 1200–3–27–.06 NO_x BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR 96). The regulations under 1200–3–27–.06 affect EGUs and non-EGUs. Rule 1200–3–27–.06 NO_x BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR 96) added 10 new subparts: Subpart A—NO_x Budget Trading Program General Provisions; Subpart B—Authorized Account Representative for NO_x Budget Sources; Subpart C—

Permits; Subpart D—Compliance Certification; Subpart E—NO_x Allowance Allocations; Subpart F—NO_x Allowance Tracking System; Subpart G—NO_x Allowance Transfers; Subpart H—Monitoring and Reporting; Subpart I—Individual Unit Opt-ins; and Subpart J—Mobile and Area Sources [Reserved].

Tennessee's NO_x Budget Trading Program establishes and requires a NO_x allowance trading program for large EGUs and non-EGUs. The regulations under 1200–3–27–.06 establish a NO_x cap and allowance trading program for the ozone control seasons beginning May 31, 2004.

The State of Tennessee voluntarily chose to follow EPA's model NO_x budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_x emissions trading program for large EGUs and non-EGUs. Tennessee's NO_x Budget Trading Program is based upon EPA's model rule, therefore, Tennessee sources are allowed to participate in the interstate NO_x allowance trading program that EPA will administer for the participating states. The State of Tennessee has adopted regulations that are substantively identical to 40 CFR part 96, with the exceptions of the allocation period and the State trading program budget. Tennessee chose to use a 15-year allocation period (2004–2018) for NO_x allowance allocations, with the NO_x allowance allocations, in accordance with Sec. 96.42, being submitted by April 1, 2016 (15 years after initial allocation), and April 1st of each year thereafter, to the Administrator for the control period in the year that is three years after the year of the applicable deadline. Tennessee's NO_x allocations do not exceed the values allowed to meet the State cap. Therefore, pursuant to 40 CFR 51.121(p)(1), Tennessee's SIP revision is

approvable as satisfying the State's NO_x emission reduction obligations. Under 1200–3–27–.06, Tennessee allocates NO_x allowances to the EGU and non-EGU units that are affected by these requirements. The NO_x trading program applies to all Phase I units that are fossil fuel-fired EGUs with a nameplate capacity greater than 25 MW or more and selling any amount of electricity to the grid, or that are fossil fuel-fired non-EGUs that have a heat input capacity equal to or greater than 250 mmBtu per hour. Each NO_x allowance permits a source to emit one ton of NO_x during the seasonal control period. NO_x allowances may be bought or sold. Unused NO_x allowances may also be banked for future use, with certain limitations.

Tennessee also chose to revise Section 96.40 (State trading program budget) from the model rule at 1200–3–27–.06(1)(f) to allow for the allocation of additional allowances to NO_x budget units that have been generated through NO_x emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee's NO_x Reduction and Trading Program with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by removing or making specific revisions to the unapprovable language. By letter dated June 25, 2002, EPA explained in detail the problems with this language and stated that the language should be deleted or replaced with specified, revised language.

Source owners will monitor their NO_x emissions by using systems that meet the requirements of 40 CFR part 75,

subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

Tennessee's Rule 1200–3–27–.04 STANDARDS FOR CEMENT KILNS establishes requirements for cement manufacturing facilities, however, these sources are subject to NO_x reduction requirements but do not participate in the NO_x trading program. Cement kilns are not included in the trading program, but will be required to install low NO_x burners, mid-kiln system firings or technology that achieves the same emission decreases. Tennessee's submittal does not rely on any additional reductions beyond the anticipated Federal measures in the mobile and area source categories. However, Tennessee revised the model rule to allow for the allocation of additional allowances to NO_x budget units that have been generated through NO_x emission reductions from industrial, mobile, and area source sectors in the future. It is expected that Tennessee will revise this provision to be consistent with EPA requirements. Therefore, Tennessee may comply in the future using measures beyond the measures anticipated by the Federal rule.

Tennessee's submittal demonstrates that the Phase I NO_x emission budgets established by EPA will be met as follows:

Source category	EPA 2007 NO _x budget emissions (tons/season)	Tennessee 2007 NO _x budget emissions (tons/season)
EGUs	25,814	25,814
Non-EGUs	5,519	5,519
Area Sources	13,333	13,333
Non-road Sources	52,920	52,920
Highway Sources	66,342	66,342
Total	163,928	163,928

C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_x SIP Call, the final NO_x SIP Call rule provided each affected state with a "compliance supplement pool." The

compliance supplement pool is a quantity of NO_x allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2004 and 2005 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO_x SIP Call

included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO_x SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms.

First, a state may issue some or all of the pool to sources with credits from implementing NO_x reductions beyond all applicable requirements in the ozone season during 2000–2003 (i.e., early reductions). This allows sources that cannot install controls prior to May 31, 2004, to purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3). In Tennessee's rule, each NO_x Budget unit for which the owner or operator requests any early reduction credits shall reduce its NO_x emission rate, for each control period in 2001, 2002, and 2003 for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO_x emission rate in the 2000 control period for EGUs, and for non-EGUs, to less than 95 percent of the unit's NO_x emission rate in the 2000 control period. In order to qualify for early reduction credits, a source will have had to been monitoring according to part 75, subpart H, in the 2000 ozone season to establish a baseline against which the subsequent reductions may be demonstrated. Further, all reductions must be above and beyond any requirement under the Clean Air Act.

D. What Is the New Source Set-Aside?

40 CFR Part 96 requires that new sources hold allowances to cover their emissions. EPA maintains that as much as possible within the context of the overall trading budget, allocations should be provided to new sources on the same basis as that used for existing units until the time when the new sources receive an allocation as part of an updating allocation system. In order to provide NO_x allowances to new NO_x Budget units, § 96.42(d) establishes an allocation set-aside account equaling 5 percent of the State trading program budget in 2004 and 2005, and 2 percent thereafter. (However, a state may have any size set-aside, may allocate the set-aside in whatever manner it chooses, and may carry over from one year to the next any amount of allowances.) Authorized account representatives from a new source may request NO_x allowances from the State on a first-come, first-served basis, at an emission rate (0.15 lb/mmBtu for EGUs and 0.17 lb/mmBtu for non-EGUs) multiplied by a budget unit's maximum design heat

input and by the hours in the control period starting with the first hour of operation. After the control period, EPA will deduct NO_x allowance based on the unit's actual utilization during the control period. As a result of the deduction, the allocation for the new unit from the set-aside will effectively equal the product of the emission rate and the unit's actual heat input for the control period season. Allowances not issued to new sources in the applicable control period will be returned to the existing sources in the State on a pro-rata basis to guard against the possibility of a disproportionately large set-aside.

Tennessee's SIP provides for New Source Set-asides. For EGUs the allocation set-aside will be allocated NO_x allowances equal to 4.3 percent of the tons of NO_x emissions in the State trading program budget apportioned to EGUs under section 96.40, rounded to the nearest whole NO_x allowance as appropriate. The allocation set-aside for new source growth will be the NO_x allowances remaining in the state trading program budget for non-EGUs after allocations are set for all NO_x budget units. This approach to allocations for new units is acceptable because it falls within the flexibility of the NO_x SIP Call requirements for a state's allocation to new sources.

III. Proposed Action

EPA is proposing to conditionally approve the Tennessee's SIP revision consisting of its draft NO_x Budget Trading Program, which was submitted on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001. EPA finds that Tennessee's submittal is approvable with one exception because it meets the requirements of the Phase I NO_x SIP Call.

The exception refers to Section 96.40 State trading program budget. Tennessee revised the model rule at 1200–3–27–.06(1)(f) to allow for the allocation of additional allowances to NO_x budget units that have been generated through NO_x emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee's NO_x Reduction and Trading Program, including a rule for cement kilns, with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by removing or revising the unapprovable language.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02-20580 Filed 8-13-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7257-4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Standard Steel and Metals Salvage Yard Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Standard Steel and Metals Salvage Yard Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Alaska Department of Environmental Conservation have determined that the remedial action for

the site has been successfully executed by the responsible parties and no further response under CERCLA is needed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 14, 2002.

ADDRESSES: Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for reviewing at: U.S. Environmental Protection Agency, Region 10, Superfund Records Center, 1200 Sixth Avenue, Seattle, Washington 98101.

Information on the site and a copy of the deletion docket are available for viewing at the Information Repository which is located at: Alaska Resources Library & Information Services, 3150 C Street, Suite 100, Anchorage, Alaska 99513, (907) 272-7547.

FOR FURTHER INFORMATION CONTACT:

Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101, phone: (206) 553-1066, fax: (206) 553-0124, e-mail: gaines.beverly@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
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I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Standard Steel and Metals Salvage Yard Site, which is located in Anchorage, Alaska, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Alaska Department of Environmental Conservation have determined that the remedial action for the site has been

successfully executed by the responsible parties and no further response under CERCLA is needed.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Standard Steel & Salvage Yard Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of this site, the selected remedy is protective of human health and the environment, however, because the remedy leaves waste on site above levels that allow for unlimited use and unrestricted exposure, a review of the selected remedy will be conducted at least every five years from initiation of the remedial action.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) Responsible parties have implemented all appropriate response actions