

US EPA ARCHIVE DOCUMENT

**DATES:** Comments must be received on or before September 8, 1999.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella or Craig Flamm, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-3892 or (212) 637-4021, respectively.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 23, 1999.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 99-20306 Filed 8-6-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 97

[FRL-6416-7]

#### Notice of Availability of Unit-Specific Information for Affected Sources Under the Section 126 and Proposed Section 110 FIP Rulemakings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is making available to the public three sets of data relating to our proposed Federal NO<sub>x</sub> Budget Trading Program. We proposed the program in rulemakings under sections 126 and 110 of the Clean Air Act. The program aims to reduce interstate transport of ozone by controlling emissions of nitrogen oxides (NO<sub>x</sub>). NO<sub>x</sub> emissions significantly contribute to violations of the National Ambient Air Quality Standard for ozone in downwind states.

This document is a notice of availability and request for comment on the following data related to the allocation of NO<sub>x</sub> allowances under the Federal NO<sub>x</sub> Budget Trading Program: electric generation data from May through September for the years 1995 through 1998, for electric generating units (EGUs); heat input data from May through September for the year 1998 for all EGUs reporting under EPA's Acid Rain Program; heat input data from May through September for the years 1997 and 1998 and heat rate data for EGUs not reporting under EPA's Acid Rain Program; and heat input data for May through September for the year 1995 for certain non-electric generating units (non-EGUs). We may use these data in the future to allocate NO<sub>x</sub> allowances under the Federal NO<sub>x</sub> Budget Trading Program. Therefore, EPA is providing an opportunity for public comment on these data.

Readers should note that we will only consider comments about the data discussed in this notice and are not soliciting comments on any other topic. In particular, we are not reopening the comment period for the October 21, 1998 proposed rule on the section 126 rulemaking or the October 21, 1998 proposed rule on the section 110 Federal Implementation Plans (FIPs) through this Notice of Data Availability. Neither are we soliciting comments on inventory data for 1995 and 1996 that we used to develop Statewide emission budgets.

**DATES:** Comments on the data will be accepted through September 8, 1999.

**ADDRESSES:** You may submit comments to the Air and Radiation Docket and Information Center (6102), Docket Nos. A-97-43 (section 126 rulemaking) and A-98-12 (section 110 FIP rulemaking), U.S. Environmental Protection Agency, 401 M Street SW, room M-1500, Washington, DC 20460, telephone (202) 260-7548. Identify your comments with these docket numbers. Submit two originals or exact duplicates of your comments to each docket. Please submit your comments on paper, not in electronic format. We request this so that we do not receive multiple versions of the same comment that might contradict each other.

Documents relevant to this action are available for inspection at the Air Docket and Information Center, at the above address, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning today's action and technical questions

concerning electrical generation data should be addressed to Margaret Sheppard, Acid Rain Division, EPA, Mail Code 6204 J, 401 M Street SW, Washington, D.C. 20460, telephone 202-564-9163, email address sheppard.margaret@epa.gov. For technical questions concerning heat input data, contact Kevin Culligan at telephone 202-564-9172, email address culligan.kevin@epa.gov.

#### SUPPLEMENTARY INFORMATION:

Outline:

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#### 1. What is Today's Action?

Today, we are making available data on heat input and electrical generation for units that could potentially be affected by a Federal action under section 126 or by a FIP under section 110 of the Clean Air Act. The purpose of making the data available for comment is to ensure that we have accurate information to help us develop NO<sub>x</sub> allowance allocations for the Federal NO<sub>x</sub> Budget Trading Program. For example, the data referenced by this document could be used as the basis for NO<sub>x</sub> emission allowance allocations to be finalized under the section 126 rulemaking. Also, a number of Northeastern States have stated that they intend to submit SIPs in response to EPA's NO<sub>x</sub> SIP Call by September 30, 1999. Data referenced in this notice could aid States in developing NO<sub>x</sub> allowance allocations for their SIPs.

#### 2. Where Can I Get the Data?

These data are available in files on the Regional Transport of Ozone webpage at <http://www.epa.gov/ttn/rto/>. You will find links to the data under "What's New" and under the "Related Documents and Data" subheadings

under the "Transport FIPs" and "Section 126 Petitions" headings on the Regional Transport of Ozone webpage. The files are in a compressed file labeled "alldata.zip"; this compressed file contains three files labeled "egufinal.txt," "zegout.txt," and "nonegu.txt." In addition, these data are in Docket Nos. A-97-43 (section 126 rulemaking) and A-98-12 (section 110 FIP rulemaking). We describe the contents of these data files below under section 5, "What data are EPA making available for review and comment?"

### 3. How Are These Data Related to the Proposed Section 126 and Section 110 FIP NO<sub>x</sub> Allowance Allocations?

In the section 126 and section 110 FIP proposed rulemakings (63 FR 56291 and 63 FR 56393, October 21, 1998), we requested comment on appropriate ways to allocate NO<sub>x</sub> allowances for the Federal NO<sub>x</sub> Budget Trading Program. We also proposed three different methods for allocating NO<sub>x</sub> allowances for EGUs using the following data:

a. Heat input data during May through September (the ozone season) for the years 1995 through 1997 for fossil fuel-fired units.

b. Estimated electric generation for fossil fuel-fired units during May through September for the years 1995 through 1997. We calculated electric generation using the historical heat input data in million British thermal units (mmBtu) and heat rate data in kilowatt hours (kWh) per Btu.

c. Estimated electric generation for all electricity generators during May through September for the years 1995 through 1997. We calculated electric generation for fossil fuel-fired units using the historical heat input and heat rate data. This option differed from the second option because it also included allocations for electric generating plants that do not burn fuel, such as nuclear and hydroelectric power plants. For electric generating plants that did not burn fuel, we used electric generation data calculated using outputs from the Integrated Planning Model (IPM). (IPM is an economic model used by industry and government. EPA used this model to estimate the costs and emission reductions that would result from controlling NO<sub>x</sub> emissions under the NO<sub>x</sub> SIP call. See 63 FR 57356, October 27, 1998.)

During the public comment periods for the proposed section 126 and section 110 FIP rulemakings, commenters suggested that we rely on additional, and in some cases different, sources of data than those we proposed for the allocations for EGUs. In particular, commenters suggested using data for

1998 and using electric generation data from the Energy Information Administration (EIA).

In the proposed section 126 and section 110 FIP rulemakings, we also proposed one method for allocating NO<sub>x</sub> allowances for large non-EGUs (that is, units with a maximum design heat input greater than 250 mmBtu/hr). For this notice, non-EGUs are only fossil-fuel fired industrial boilers and turbines. We proposed using heat input data for non-EGUs during May through September for the year 1995. Commenters suggested that we use more than one year's worth of data to allocate NO<sub>x</sub> allowances for non-EGUs, but they did not suggest where we could find other data.

4. Why is EPA Requesting Comment on These Data?

We are soliciting comment to ensure that we can use current, high quality data for allocating NO<sub>x</sub> allowances, regardless of the methodology we will choose for the allocation. We are requesting comments on unit-specific output data for EGUs from May through September for the years 1995 through 1998. We also are requesting comments on unit-specific heat input data for all EGUs for May through September for the year 1998. We request comments submitting data for EGUs that do not report under the Acid Rain Program for May through September for the years 1997 and 1998. Finally, we are requesting comment on unit-specific heat input data for non-EGUs from May through September for the year 1995. Where the heat input from May through September for the year 1995 is not representative of a non-EGU's operation over the last several years, we also will take comments providing us with heat input data from May through September for the years 1996, 1997, and/or 1998. We may use the data referenced in this document for allocating allowances. As explained further below in the section entitled, "What supporting documentation do I need to provide with my comments?", EPA expects to change the data in response to comment only if the commenter provides appropriate supporting documentation.

5. What Data are EPA Making Available for Review and Comment?

We are providing data for units and generators in the following states which may be subject to the Federal NO<sub>x</sub> Budget Trading Program under a section 126 action or under a FIP: Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South

Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. We are making the following data available for review:

a. EGU electric generation data from May through September for the years 1995 through 1998, which we may use in an electricity output-based allocation. In addition, there are heat rate data that we used to calculate the electric generation for non-utility generators. We request comment on these heat rate values. See section 7, "What are the sources of EPA's data?", subsection c. for further discussion about how we used heat rate data to determine electric generation.

b. Heat input data for May through September for the year 1998 for all EGUs reporting under the Acid Rain Program, which we may use in a heat input-based allocation. We do not have heat input data for EGUs that are not reporting under the Acid Rain Program for 1998, and we have only limited data for these units for 1997. We are recording zero heat input for these units for those years where the data are not available. We request comment on heat input data from May through September for the years 1997 and 1998, which EPA could use for the heat input-based allocation for specific EGUs that are not reporting under the Acid Rain Program.

c. Heat input data for May through September for the year 1995 for non-EGUs, which we may use in a heat input-based allocation. If you find that the heat input for your unit during May through September for the year 1995 is not representative of your unit's operation over the last several years, then you may comment and provide us heat input data for May through September for the years 1996, 1997, and/or 1998. See section 4, "What supporting documentation do I need to provide with my comments?" for details on the supporting information you should provide.

The data files include information for fossil fuel-fired units which are listed in our updated emission inventory and for electric generators that do not burn fuel for which we previously proposed output-based allocations under the Federal NO<sub>x</sub> Budget Trading Program. During preparation of the proposed NO<sub>x</sub> allowance allocations, we did not have a reliable source of nameplate capacity data for generators that do not burn fuel. Recently, we have obtained reliable nameplate capacity data for more of these generators from EIA that we could use to identify whether or not generators are greater than 25 MWe. Thus, we also request comments on nameplate capacity of electric generators that do not burn fuel.

You will find the data in three files:



- “eguburn.txt”—This data file contains unit and source identification information, nameplate capacity, identification of which units are reporting under the Acid Rain Program, heat rate, electric generation data, and heat input data for fossil fuel-fired EGUs serving generators with a nameplate capacity greater than 25 MWe.

- “egunonox.txt”— This data file contains generator and source identification information, nameplate capacity, source of energy, and electric generation data for electric generators that do not burn fuel.

- “nonegu.txt”— This data file contains unit and source identification information and heat input data for fossil fuel-fired non-EGUs with a maximum design heat input greater than 250 mmBtu/hr.

See section 2 above, “Where can I get the data?” for the location of the data on the Internet.

## 6. What Things EPA Not Requesting Comment on?

We are soliciting comment only on the data presented through this document. We are not requesting comment on any other issue or data. For example, we are not requesting comment on:

- The October 21, 1998 proposed section 126 rule.

- The October 21, 1998 proposed section 110 FIP rule.

- Issues related to the Statewide emission budgets and to the 1995 and 1996 emission inventories (e.g., heat input values for EGUs for 1995 and 1996, or NO<sub>x</sub> emission values for non-EGUs for 1995).

- The May 14, 1999 updated emission inventory.

- Allocation methods for EGUs or non-EGUs in the proposed Federal NO<sub>x</sub> Budget Trading Program.

- The April 30, 1998 final section 126 rule.

- The June 14, 1999 interim final and proposed section 126 rules.

Please note that we have not made any decision on the methodology for allowance allocations. We solicited comment on the appropriate allocation methodology in the proposed section 126 and section 110 FIP rulemakings and are considering the comments we have received.

## 7. What are the Sources of EPA's Data?

### a. Electric Generation Data for Utilities

Electric utilities reported electric generation data to the Energy Information Administration (EIA) on EIA form 759. We obtained net electric generation data in megawatt hours

(MWh) for the ozone season (May through September) during the years 1995 through 1998, for each utility power plant that submitted EIA form 759. These data are available through the EIA's webpage at <ftp://ftp.eia.doe.gov/pub/electricity/>.

We apportioned the plant-level net electric generation data in EIA Form 759 to each unit at the plant. For electric generators that did not burn fuel, we generally divided the plant-level generation using each generator's portion of the total nameplate capacity of all generators at the plant. For certain plants, we found that generator-specific nameplate capacity data were unclear. In these cases, we apportioned the data from EIA form 759 to each generator at the plant equally. These plants included nuclear power plants, hydroelectric plants, and other facilities that did not combust fuel to generate electricity. For generators at plants that did not combust fuel for which data from EIA form 759 are not available, EPA used generation calculated using IPM. The data file includes this average value for the ozone season during all four years (1995 through 1998) for these units.

For fossil fuel-fired units, generally we divided the plant-level generation in EIA form 759 using each unit's portion of the plant's total heat input during the ozone season. We describe this calculation further below. For plants at which we had heat input data for some units but were uncertain about the heat input data for other units at the plant, we apportioned the data from EIA form 759 data on the basis of each unit's nameplate capacity. This situation arose generally in 1997 and 1998 for plants which had some units reporting under the Acid Rain Program and some units that were not reporting under the Acid Rain Program.

### b. Heat Input Data for EGUs

To apportion plant-level electric generation data to individual units for 1995 and 1996, we used the heat input in the May 14, 1999 updated inventory (see 64 FR 28250). For units that reported emissions and heat input data under the Acid Rain Program, these heat input data came from reports submitted to EPA to demonstrate compliance under the Acid Rain Program. For units that did not report emissions and heat input data under the Acid Rain Program, we collected heat input data while developing our May 14, 1999 updated inventory. Values in the May 14, 1999 updated inventory were either reported to the Agency by sources or by State environmental agencies. The heat input data for the ozone seasons during 1995 and 1996 have been subject to

multiple public reviews. Thus, we are not requesting further comments on these data.

To apportion plant-level electric generation data to individual units for 1997, we are using heat input data that we used to develop proposed NO<sub>x</sub> allowance allocations in the October 21, 1998 proposed section 126 and section 110 FIP rulemakings. We modified these heat input values in response to comments. You can find an explanation of the changes we made to the heat input data in the response to comments document in the docket for the NO<sub>x</sub> SIP Call (Docket No. A-96-56). We based most of the heat input data for the 1997 ozone season upon the data reported to us under the Acid Rain Program. In addition, for some EGUs that did not report under the Acid Rain Program, we used heat input values for 1997 which we received in public comments in connection with the May 14, 1999 updated inventory. (We did not use heat input data for the year 1997 to establish emission budgets.) EPA again requests comment on heat input data for the 1997 ozone season for sources that do not report under the Acid Rain Program.

For May through September of 1998, we used the heat input reported by sources for compliance purposes under the Acid Rain Program. Under the Acid Rain Program, the designated representative for the affected source has certified the data in these reports as accurate. Because we do not have heat input data for units that are not reporting under the Acid Rain Program, we include heat input values of zero for them in the data files for 1998. See the discussion below for “electric generation data for non-utility generators.” We used the 1998 heat input data both:

- To apportion electric generation data to units within a plant; and
- To create the separate set of 1998 heat input data that we are offering for comment in today's action.

### c. Electric generation and heat input data for non-utility generators

We do not have measured electric generation data for non-utility generators. Although EIA gathers generation data from these units, EIA kept those plant-specific data confidential for 1995 through 1997. Although EIA will be making the 1998 generation data publicly available, it has not yet done so.

Where commenters provided heat rate or heat input information for their non-utility units, we used those values instead to calculate electric generation. Commenters could have provided comments on heat input data or heat

rate data with their comments on the October 21, 1998 proposed section 126 and section 110 FIP rules or could have provided comments on heat input data with their comments on the October 27, 1998 version of the emission inventory used to develop State NO<sub>x</sub> emission budgets under the final NO<sub>x</sub> SIP Call rule. If commenters did not provide heat rate information for their non-utility units, then we used the generic heat rate value used in the Integrated Planning Model (IPM) for the unit type and nameplate capacity (for these heat rate values, see the October 21, 1998 proposed section 126 rule, 63 FR 56316). In cases where commenters did not send us heat input information, we used calculated average values for heat input from IPM for 1995 and 1996 (the years that could be used to calculate States' emission budgets). This means that in some cases, you will see the same heat input for 1995 and 1996 and no heat input or generation for 1997 or 1998 in EPA's data files. We then used the heat rate and heat input values from IPM to calculate generation values for 1995 and 1996 at these units. We also did this for 1997 if a commenter provided 1997 heat input data for a non-utility unit. We have not included 1998 heat input values or 1998 generation values in the data file for these units.

For non-utility generators that did not burn fuel, such as hydroelectric plants, we used IPM to calculate average values for generation for the ozone seasons from 1995 through 1997. In the data file for the generators that did not burn fuel, this average electric generation for each generator is the generation value for each of the four ozone seasons from 1995 through 1998.

#### *d. Heat Input Data for non-EGUs*

For heat input data for non-EGUs, we used data for 1995 developed from the October 27, 1998 version of the emission inventory used to develop State NO<sub>x</sub> emission budgets under the final NO<sub>x</sub> SIP call rule. We also used data submitted during multiple public comment periods on the inventory underlying the NO<sub>x</sub> SIP call and section 126 actions. The last public comment period was open from October 27, 1998 to February 22, 1999 and resulted in the May 14, 1999 updated inventory. See 64 FR 26298.

#### **7. What Other Data Sources Did EPA Consider?**

We also considered using unit-specific generation data reported to EIA on EIA form 767. A commenter

provided this data for many units which were listed in the October 27, 1998 version of the emission inventory used to develop State NO<sub>x</sub> emission budgets under the final NO<sub>x</sub> SIP call rule. Form 767 is for steam-electric generators with a nameplate capacity of 10 MWe or more. It does not apply to turbines or combined cycle systems. We did not use the data from EIA form 767 because we did not have these data for turbines, combined cycle systems, or units added to EPA's May 14, 1999 updated inventory based on comments received during the October 27, 1998 to February 22, 1999 public comment period. In addition, data from EIA form 767 are not yet available for 1998.

In order to treat all unit types consistently and in order to use the same approach for all years from 1995 through 1998 for as many units as possible, we instead chose to use data from EIA form 759. However, we would consider comments that provide data from EIA form 767 for specific units as a way of apportioning generation from the plant level, as reported on EIA form 759, rather than using heat input or nameplate capacity. We recognize that the electric generation data from EIA form 767 is a measured value and thus provides a more precise and more accurate electric generation value than using heat input or nameplate capacity to apportion generation from the plant level. However, we also note that the electric generation data from EIA form 767 are not available at all for many units and are not available for 1998 for any unit at this time. You can find the unit-level data from EIA form 767 that a commenter provided to the Agency for most fossil fuel-fired boilers in the file "eguout.xls" on the Regional Transport of Ozone webpage in the same locations as for the data files mentioned above under section 2, "Where can I get the data?".

#### **8. What supporting documentation do I need to provide with my comments?**

While we will consider all comments we receive during the public comment period on the topics for comment in this notice, we expect to change the data in response to comment only if the commenter sends appropriate supporting documentation. Therefore, you should send supporting documentation from prior to the date this document was signed with your comments if you want us to change or add data for electric generation or heat input. Please submit your comments and supporting documentation on

paper, not in electronic format. We request this so that we do not receive multiple versions of the same comment that might contradict each other.

For electric generation data from EGUs (May through September, 1995–1998), we will accept data that was already reported to EIA. For utilities, we will accept copies of EIA form 767 for all steam generating units at a source. If you have already submitted a new or revised EIA form 759 to EIA, also send a copy with any comment to EPA. For non-utility generators, we will accept data the source used to report on EIA form 867 for the years 1995 through 1997 or EIA form 860B for the year 1998. If the form requires annual generation data, you will also need to include an explanation and documentation for apportioning the annual generation to the ozone season (May 1 through September 30). If you own or operate an EGU and you want to use data other than what you previously reported to EIA, you should:

- State the source of the new data;
- Thoroughly explain and document why the data reported previously was incorrect; and
- Explain why the new data is more accurate.

For heat input data for units that do not report under the Acid Rain Program, including non-EGUs, we will consider corroborating data. This would include fuel purchase records or information reported to a State environmental agency or a State utility commission.

In general, we do not expect to change heat input data for units reporting under the Acid Rain Program since the source's designated representative under the Acid Rain Program has already submitted the heat input data and certified their accuracy for compliance purposes. However, we will consider changes if the source's designated representative provides evidence that we improperly calculated heat input at the unit level, where the heat input was actually measured at another location (such as a common stack). We will also consider changing heat input data for a unit reporting under the Acid Rain Program if the source's designated representative demonstrates that the data we are providing for comment here do not agree with the data reported to EPA for compliance with the Acid Rain Program. You should explain why the data values in EPA's data file(s) are incorrect and document and explain the new data values. See Table 1 below.

TABLE 1.—SUPPORTING DOCUMENTATION YOU SHOULD SEND TO EPA WITH YOUR COMMENTS

If you have this source type:	and you are commenting on this type of data:	Then you should submit this documentation:
EGU boiler reporting under the Acid Rain Program.	electrical generation. heat input .....	(May-Sept. of 1995, 1996, 1997, or 1998) • Updated EIA form 759 or EIA form 767. (May-Sept. 1998) • Explanation and documentation of why heat input was incorrect and • Explanation of new values.
EGU turbine or combined cycle unit reporting under the Acid Rain Program.	electrical generation. heat input .....	(May-Sept. 1995, 1996, 1997, or 1998) • Updated EIA form 759. (May-Sept. 1998) • Explanation and documentation of why heat input was incorrect and • Explanation of new values.
EGU non-utility generator (not reporting under the Acid Rain Program).	electrical generation.  heat input .....	(May-Sept. 1995, 1996, or 1997) • EIA form 867 and • Explanation and documentation for apportioning the annual generation to the ozone season or (May-Sept. 1998) • EIA form 860B. (May-Sept. 1998) • Fuel purchase records or • Information reported to a State environmental agency or a State utility commission.
Non-EGU .....	heat input .....	(May-Sept. 1995 <sup>1</sup> ) • Fuel purchase records or • Information reported to a State environmental agency or a State utility commission.

<sup>1</sup> If heat input during May through September for the year 1995 is not representative of your unit's operation over the last several years, then you may provide us heat input data for May through September for the years 1996, 1997, and/or 1998 with the same type of supporting documentation.

**9. How is this action related to the Section 126 and proposed Section 110 FIP rulemakings?**

On October 21, 1998, in accordance with section 126, we proposed action on the petitions filed by eight Northeastern States seeking relief from the transport of NO<sub>x</sub> across State boundaries. See 63 FR 56291. NO<sub>x</sub> is one of the main precursors of ground-level ozone. We also proposed FIPs that may be needed if any State fails to revise its State Implementation Plan (SIP) to comply with the NO<sub>x</sub> SIP call. See 63 FR 56393, October 21, 1998. In these actions, we proposed to control emissions from large boilers, turbines, and combined cycle systems through the Federal NO<sub>x</sub> Budget Trading Program.

The Federal NO<sub>x</sub> Budget Trading Program is a multi-state NO<sub>x</sub> air pollution control and emission reduction program. We proposed the Federal trading program in part 97 as a way to reduce the interstate transport of ozone and NO<sub>x</sub>. We are developing this program to control NO<sub>x</sub> emissions cost-effectively from large stationary sources. These large sources, mostly power plants and industrial boilers and turbines, significantly contribute to violations of the National Ambient Air Quality Standards for ozone in States downwind of the sources.

The section 126 and section 110 FIP Notices of Proposed Rulemaking are contained in the rulemaking dockets. They are also currently available on EPA's Website at <http://www.epa.gov/ttn/rto> under "Section 126 Petitions" and "Transport FIPs."

On April 30, 1999 we issued a final section 126 action that determined that portions of the petitions are approvable based on their technical merits (64 FR 28250, May 5, 1999). We deferred making final findings under section 126, which would trigger control requirements for sources, pending certain actions by States and EPA with respect to the NO<sub>x</sub> SIP call. We also delayed finalizing the details of the Federal NO<sub>x</sub> Budget Trading Program. On May 14, 1999, the District of Columbia Circuit Court of Appeals remanded the 8-hour National Ambient Air Quality Standard for ozone, which formed part of the underlying technical basis for EPA's determinations on certain section 126 petitions. In a separate action, the same court granted a motion to stay the SIP submission deadline for the NO<sub>x</sub> SIP call. This action, in effect, also stays the potential for a related FIP. In addition, the court action impacts the section 126 final rule, because we had linked our final

findings under section 126 with the NO<sub>x</sub> SIP call schedule.

In light of the court rulings, we issued an interim final rule (64 FR 33956, June 24, 1999). The interim final rule temporarily stays the April 30, 1999 Section 126 rule while we conduct notice-and-comment rulemaking to modify certain aspects of that rule. On June 24, 1999, we also issued a proposed rule, which proposed to:

- (1) indefinitely stay the portion of the April 30, 1999 rule that relied on the 8-hour ozone standard, and
- (2) remove the automatic trigger mechanism for making section 126 findings that was linked with the NO<sub>x</sub> SIP call deadlines; instead, we would simply take an independent action making the findings in a final rule (64 FR 33962). Under this new schedule, we will move forward with the portion of the section 126 rulemaking that is based on the 1-hour ozone standard. We intend to finalize the Federal NO<sub>x</sub> Budget Trading Program and allowance allocations for sources that will be subject to section 126 control requirements at the same time that we make the section 126 findings. In the June 24, 1999 proposal, we indicated that we expected to issue the section 126 final rule by November 30, 1999 or soon thereafter. We also would use the Federal NO<sub>x</sub> Budget Trading Program



for certain source categories if we ultimately issue a FIP in conjunction with the NO<sub>x</sub> SIP call.

### 10. How is This Action Related to the NO<sub>x</sub> SIP Call?

This action is not directly related to the NO<sub>x</sub> SIP Call, but is related indirectly. The data could be used to determine NO<sub>x</sub> allowance allocations if we issue a FIP because a State fails to respond adequately to the NO<sub>x</sub> SIP Call. States could also use the data to prepare NO<sub>x</sub> allowance allocations for their SIPs. Some Northeastern States have stated that they intend to submit SIPs in response to EPA's NO<sub>x</sub> SIP Call by September 30, 1999.

Dated: July 30, 1999.

#### Robert Perciasepe,

*Assistant Administrator for Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-6413-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Smuggler Mountain Superfund site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency, Region 8 announces its intent to delete the Smuggler Mountain Superfund 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 Colorado (State) have determined that the Site as remediated poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before September 8, 1999.

ADDRESSES: Comments may be mailed to: Armando Saenz, Remedial Project

Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mail Stop EPR-SR, Denver, Colorado 80202-2466.

Comprehensive information on this Site is available through the public docket which is available for viewing at the Smuggler Mountain Superfund Site information repositories at the following locations:

Superfund Records Center, U.S. Environmental Protection Agency, Region 8, 999 18th Street, 5th Floor, Denver, Colorado 80202-2466, (303) 312-6473. Hours of operation are 8:00 AM to 4:30 PM.

Aspen/Pitkin Environmental Health Department, 130 S. Galena Street, Aspen, Colorado 81611, (970) 920-5070. Hours of operation are 8 AM to 5 PM.

#### FOR FURTHER INFORMATION CONTACT:

Armando Saenz, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mail Stop EPR-SR, Denver, Colorado 80202-2466, (303) 312-6559.

#### SUPPLEMENTARY INFORMATION:

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#### I. Introduction

The Environmental Protection Agency (EPA), Region 8 announces its intent to delete the Smuggler Mountain Superfund Site (Site) located in Aspen, Colorado from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on this proposed deletion for thirty days following 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 procedures that EPA is using for this action. Section IV discusses the Smuggler Mountain Superfund Site and explains how the Site meets the deletion criteria. Section V summarizes this document.

#### II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release 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;

(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 release poses no significant threat to public health or the environment and, therefore, taking remedial measures is 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, EPA will conduct a five-year review of the site five years after the initiation of the remedial action to ensure that the site remains protective of public health and the environment. A statutory five-year review was completed at this site on November 11, 1997. In the case of this Site, the selected remedy is protective of human health and the environment. A subsequent five-year review will be completed prior to November 11, 2002. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

#### III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 8 has recommended deletion of the Smuggler Site and has prepared the relevant documents; (2) The State of Colorado has concurred with EPA's intent to delete the Smuggler Site; (3) Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) The Region has made all relevant documents available in the Regional Office and local Site information repositories.

Deletion of the Site from the NPL does not in itself create, alter, or revoke any