List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

Stephen L. Johnson,

Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 77, and 78

[EPA–HQ–OAR–2008–0744; FRL–8750–8]

RIN 2060–AP35

Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is taking interim final action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO_2) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in this interim final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

DATES: This action is effective on December 15, 2008 and will continue in effect until December 15, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0774, which incorporates by reference the dockets for CAIR and the CAIR FIPs (Docket ID Nos. EPA–HQ–OAR–2003–0053 and EPA–HQ–OAR–2004–0076). All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at *alpern.dwight@epa.gov*. Electronic copies of this document can be accessed through the EPA Web site at: *http://www.epa.gov/airmarkets*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 13, 2009. 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, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of this rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Overview

In May 2005 and April 2006, EPA promulgated certain revisions to the rules for the Acid Rain Program (in 40 CFR parts 72 through 78). These revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs. 70 FR 25162 (May 12, 2005); 71 FR 25328 (Apr. 28, 2006).[1] Most of these revisions were adopted for reasons independent of CAIR and the CAIR FIPs, although some were adopted to facilitate coordination of the Acid Rain trading program with the trading programs offered by EPA in CAIR and the CAIR FIPs. A few additional revisions, which are not being reaffirmed by this rule, were adopted to implement CAIR and the CAIR FIPs.

On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding CAIR and the CAIR FIPs. *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008). EPA and other parties in the proceeding have petitioned for rehearing, and the Court has not yet issued a mandate in the case. However, depending on its response to the petitions, the Court may issue a mandate. While the Court's July 11, 2008 decision upheld petitioners' objections concerning a number of issues related to CAIR and the CAIR FIPs, none of the issues raised by the petitioners, and none of the Court's determinations, addressed the Acid Rain Program rule revisions reaffirmed by this rule.

[1] The titles for the May 12, 2005 and April 28, 2006 **Federal Register** notices identify the actions taken in those notices. The full title for the May 12, 2005 notice is ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call.'' 70 FR 25162. The full title for the April 28, 2006 **Federal Register** notice is ''Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Acid Rain Program.'' 71 FR 25328.

Only a few of the Acid Rain Program rule revisions were adopted to implement CAIR and the CAIR FIPs and thus were encompassed by petitioners' arguments and the Court's decision: i.e., revisions to part 73 providing that SO_2 allowances used for compliance with CAIR and CAIR FIPs could not be used for compliance in the Acid Rain Program and revisions to part 78 providing that final actions of the Administrator under the CAIR and CAIR FIP trading programs could be appealed under the administrative appeal procedures applicable to the Acid Rain Program. *See* 70 FR 25,335/3 (revision adding § 73.35(a)(3)) and 25,338–39 (revisions referencing subparts AA through IIII of part 96 and the CAIR designated representative and CAIR authorized account representative); and 71 FR 25,379–80 (revisions referencing subparts AA through IIII of part 97 and the CAIR designated representative and CAIR authorized account representative).

This notice reaffirms the promulgation of only the other Acid Rain Program rule revisions—i.e., the revisions that were not necessary for implementing CAIR and the CAIR FIPs—finalized in the **Federal Register** notices that also finalized the CAIR and CAIR FIP rules. (These revisions are herein referred to as ''non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions''.) EPA believes it is reasonable to view the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions (which are described in detail below) as unaffected by the Court's decision, which did not address them. However, EPA is concerned that there be no uncertainty about the legal status of these rule revisions. Most of them are crucial to the ongoing operation of the Acid Rain Program, while the rest of them streamline and, in some cases, clarify the requirements of the program, thereby facilitating its operation.

For example, some of the Acid Rain Program rule revisions published in the same **Federal Register** notice as CAIR, require owners and operators to meet the requirement to hold SO_2 allowances covering annual SO_2 emissions by maintaining a sufficient amount of allowances in an allowance account for each entire plant (i.e., source). Consistent with this approach, the rule revisions also provide for SO_2 allowance transfers to be made from one source account to another source account. *See* 70 FR 25,296–98. Under the Acid Rain Program rules in place before these revisions, owners and operators were required to have a separate allowance account for each unit (e.g., boiler or combustion turbine) and could trade allowances by transferring allowances from one unit account to another. (Of course, under both the pre-revision Acid Rain Program rules and the revised rules, general accounts, which are not associated with a specific unit or source, can also be involved in allowance transfers.) The revisions requiring source-based compliance were made effective on July 1, 2006 in order to give EPA time to make the software changes necessary for implementing source-based allowance compliance and transfers and to conduct the testing to ensure proper operation of the revised allowance tracking system and in order to give owners time to adapt to source-based compliance. *Id.* at 25,296–97.

By further example, the Acid Rain Program rule revisions published in the same **Federal Register** notice as the CAIR FIPs, made effective on June 27, 2006, expressly allow, and govern, the use of agents by designated representatives, authorized account representatives, and alternates to make various types of electronic submissions under the Acid Rain Program, while preserving the representatives' ultimate responsibility for such submissions. 71 FR 25,365. These revisions give each regulated company greater flexibility in distributing, among its individual employees, the task of making electronic submissions.

After the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions became final and effective in mid-2006, EPA modified its electronic allowance and emissions tracking systems to reflect the revisions. For example, EPA removed individual-unit allowance accounts, replaced them with source accounts to which previously recorded allowance holdings were moved, and established elements in the tracking systems for making allowance transfers to and from source accounts (instead of unit accounts) and comparing the sum of the annual emissions of all regulated units at each source (instead of only an individual unit's annual emissions) to the allowances held in the source account. *See* 69 FR 32,684, 32,701 (June 10, 2004). EPA also added elements to the tracking systems for designated representatives, authorized account representatives, and alternates to create and use agents to submit quarterly emissions reports, including the resubmissions that are often necessary to correct reporting errors found by EPA. The revised Acid Rain Program provisions have been used and relied on by most, if not all, regulated companies since mid-2006.

EPA is concerned that the non-CAIR- and non-CAIR-FIP-related Acid Rain Program revisions are too important to the ongoing operation of the Acid Rain Program to allow for any uncertainty concerning their legal status, which might result in the event that the Court issues a mandate in *North Carolina*. This is particularly true for the large number of revisions that significantly affect how SO_2 allowance transfers are made and recorded, how owners and operators submit quarterly emissions reports, and how EPA compares each year the amount of allowances held and the amount of SO_2 emissions.

Allowance transfer, emissions reporting, and the comparison of emissions and allowances are matters that go to the heart of the Acid Rain Program. Under this program, an annual cap (which is about 40% lower than historical emissions for utility emissions sources) is set on the total amount of allowances issued each year. Each allowance authorizes the emission of one ton of SO_2 in the year for which the allowance is issued or in a later year. Nationwide SO_2 emissions are reduced through implementation of an emissions limitation that requires each utility emissions source to have annual SO_2 emissions not exceeding the emissions authorized by the allowances held for the year and allows for compliance through the use of allowances obtained through allocation or auction from EPA or transferred from other allowance holders. The ability of each utility emissions source to consider potential, alternative compliance options involving emission reduction actions and/or purchases or sales of SO_2 allowances in the SO_2 allowance market and to choose the option that is the most cost-effective for that emissions source results in cost-effective achievement of the national SO_2 emissions reduction goals of the Acid Rain Program. EPA implements the annual SO_2 emissions limitation through electronic allowance and tracking emissions systems that incorporate the existing Acid Rain Program rules (including rule revisions whose promulgation is reaffirmed in this notice).

If (contrary to EPA's position as discussed above) the rule revisions affecting allowance transfer, submission of quarterly emissions reports, and comparison of emissions and allowances were suddenly to become no longer effective, EPA would likely be unable to operate its electronic allowance tracking system, and might be unable to operate its electronic emissions tracking system, until extensive system modifications were made. Were the rule revisions no longer effective, the allowance tracking system would likely have to be modified to reinstate unit accounts and unit-based compliance. Similarly, the emissions tracking system might have to be modified to provide an alternative, workable approach for submission of quarterly emissions reports by designated representatives (for whom direct involvement in the submission and resubmission process for emissions reports is often not practical). Consequently, it is likely that, in the near term until the systems were modified, EPA could not record allowances transfers, owners and operators could not use transferred allowances to comply with the allowance-holding requirement, and EPA could not determine if, and owners and operators could not demonstrate that, utility emissions sources were in compliance with the SO_2 emissions limitation. Moreover, the inability—or even uncertainty about the ability—to transfer and use allowances for compliance in the near term would likely have a significant, adverse effect on the SO_2 allowance market in the near term. Under these circumstances, it is likely that potential market participants would be reluctant to rely on allowance purchases for compliance, would have difficulty determining the value of allowances that were or might be unusable, and so would be reluctant to buy or sell allowances.

For these reasons and the reasons discussed below, EPA is, in this notice, reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules as an interim final rule, whose effectiveness is immediate upon the date of promulgation in the **Federal Register**. Because it is immediately effective, the interim final rule provides no opportunity for hearing and comment. This action removes any uncertainty concerning the legal status of these non-CAIR- and non-CAIR-FIP-related revisions in the event that the Court issues a mandate in *North Carolina*. Further, simultaneously with this notice, EPA is publishing in the **Federal Register** parallel notices of proposed and direct final rules reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions. As explained in the proposed and direct final notices, those notices provide interested persons an opportunity for public hearing and comment on the rule revisions. This interim final rule will continue in effect until December 15, 2009, unless it is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these rule revisions.

Under this approach, EPA is ensuring that the public will have an opportunity to comment on these Acid Rain Program rule revisions and that these revisions will continue in effect in the meantime on an interim basis. In the event that any timely adverse comments are submitted on any of the revisions whose promulgation is reaffirmed in the proposed and direct final rules, EPA will withdraw the direct final rule, address the merits of such comments, and finalize, to the extent appropriate, any revisions. EPA intends to complete that rulemaking process and have any final Acid Rain Program rule revisions in place December 15, 2009. If that rulemaking process is completed and the resulting direct final rule or final rule is effective before December 15, 2009, the interim final rule will be withdrawn as of the effective date of the direct final rule or final rule.

II. Administrative Procedures Used in This Action

Under CAA section 307(d)(1)(S), this action revising the Acid Rain Program rules is subject to the requirements of CAA section 307(d). Section 307(d)(3) provides that a notice of proposed rulemaking, providing an opportunity for a public hearing and comment, must be published in the **Federal Register**, except under certain circumstances, as provided in the Administrative Procedure Act (5 U.S.C. 553(b)). The requirement for such a notice does not apply ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

EPA finds, for the following reasons, that providing notice and opportunity for public hearing and comment before reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions of the Acid Rain Program rules in the instant rulemaking are impracticable, unnecessary, and contrary to the public interest. As discussed above, these rule revisions were finalized on May 12, 2005 and April 28, 2006 and, since mid-2006 when they became effective, have been implemented by EPA and utilized by most, if not all, regulated companies and EPA. In fact, most of these revisions have been incorporated in the software for the allowance tracking system, which likely could not be operated without extensive modifications, and for the emissions tracking system, which

might not be operable without extensive modifications, if the incorporated revisions were no longer in effect. Consequently, as discussed above in Section I of this preamble, the loss of the effectiveness of these revisions—or even uncertainty about their continuing effectiveness—would likely result in a significant disruption of the operation of the Acid Rain Program and the SO_2 allowance market in the near term, contrary to Congressional intent that EPA implement the Acid Rain Program under CAA Title IV and contrary to the public interest in continuation of the significant, cost-effective emission reductions required, and actually achieved, under the Acid Rain Program since its commencement in 1995.

Moreover, no party petitioned for review of these rule revisions. The judicial proceedings involving the rulemaking notices (i.e., the May 12, 2005 notice at 70 FR 25162, which also finalized CAIR, and the April 28, 2006 notice at 71 FR 25328, which also finalized the CAIR FIPs) in which these Acid Rain Program rule revisions were promulgated, relate only to Petitions for Review of specific aspects of CAIR and the CAIR FIPs. No party to those proceedings asked the Court to review these revisions to the Acid Rain Program rules, and no issues concerning these revisions were raised or addressed by any petitioners, any intervenors, amici, EPA, or the Court.

Although EPA therefore believes that the Court's July 11, 2008 decision vacating and remanding of CAIR and the CAIR FIPs in *North Carolina* can reasonably be interpreted as not applying to these revisions, it is important that the legal status of these revisions be absolutely clear. EPA is concerned that, if and when the Court issues a mandate for the *North Carolina* decision, that might create uncertainty about whether these revisions remain in effect, despite EPA's belief that the decision does not apply to these revisions.

For the reasons discussed above, any such uncertainty about their continuing effectiveness would likely cause significant disruption in the near term to operation of the Acid Rain Program, the SO_2 allowance market, and the achievement of the significant, cost-effective emission reductions required under the Acid Rain Program. In order to avoid such disruption, EPA maintains that it should provide certainty about the legal status of these rule revisions as soon as possible. However, the delay inherent in providing notice and opportunity for hearing and public comment before taking final action would prevent EPA from providing this certainty as soon as possible. EPA therefore finds that providing notice and opportunity for comment in the instant rulemaking before reaffirming the promulgation of the revisions incorporated in the electronic allowance and emissions tracking systems is impracticable and contrary to the public interest.

In addition, EPA finds that providing notice and opportunity for comment in the instant rulemaking before reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions of the Acid Rain Program rules—including both those revisions incorporated in the electronic allowance and emissions tracking systems and the other revisions—is unnecessary. No petitions for review of these rule revisions were filed. Since, in addition, these rule revisions have been in effect since mid-2006 without any indication they have caused concern or problems for sources subject to the Acid Rain Program or any other members of the public, EPA maintains that it is unlikely that the public will be particularly interested in commenting on the revisions.

Moreover, EPA is limiting the effectiveness of the interim final rule reaffirming the promulgation of these rule revisions and, during the period of the interim final rule's effectiveness, is providing a full opportunity for comment on the rule revisions. Specifically, EPA is providing that the interim final rule will be effective for one year and, simultaneously with this notice, is publishing in the **Federal Register** parallel notices of direct final and proposed rules that will provide the opportunity for comment on these rule revisions. If any timely adverse comment is submitted on the direct final rule, EPA will withdraw the direct final rule and may issue a final rule that changes the revisions and implements any such change in a manner that will not disrupt the ongoing operation of the Acid Rain Program and the SO_2 allowance market. In order to coordinate the interim final, direct final, and proposed rulemakings, EPA is making the interim final rule effective until December 15, 2009, unless the interim final rule is withdrawn on an earlier date by the direct final rule, or (if the direct final rule itself is withdrawn) the final rule, addressing these revisions.

For all of the above-discussed reasons, EPA finds, under 5 U.S.C. 553(b)(3)(B), that providing notice of proposed rulemaking and hearing and comment opportunity before making these revisions final on an interim basis is impracticable, unnecessary, and/or contrary to the public interest.

In addition, EPA also finds that there is good cause under 5 U.S.C. 553(d) to make this interim final rule—reaffirming the promulgation of the Acid Rain Program rule revisions—immediately effective upon publication in the **Federal Register**. As explained above, operation of the Acid Rain Program and the SO_2 allowance market in the near term would likely be significantly disrupted by any uncertainty over the effectiveness of most of the rule revisions. Further, no petitions for review of these revisions were filed, and no concerns or issues have been raised on the merits of any of the revisions in the proceedings concerning CAIR and the CAIR FIPs. EPA therefore finds that the effectiveness of the rule revisions should be made clear as soon as possible by making the interim final rule immediately effective upon publication.

III. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

In this notice, EPA is reaffirming, as an interim final rule, the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions of the Acid Rain Program rules, which revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs. EPA is reaffirming the following three types of non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules: (1) Revisions that implement source-level, rather than unit-level compliance with the allowance-holding requirement in the Acid Rain Program, effective on July 1, 2006; (2) revisions that expressly allow designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions to the Administrator, effective on June 27, 2006; and (3) revisions making technical changes to streamline and, in some cases, clarify the requirements of the Acid Rain Program, effective on June 27 and July 1, 2006 depending on the specific revision. Out of all the Acid Rain Program rule revisions that were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs, the only revisions whose promulgation EPA is not reaffirming are those that are related to CAIR and the CAIR FIPs, i.e., those (which are described in detail in Section III.D of this preamble) that are necessary for implementation of the CAIR and CAIR FIP trading programs. This action will have no impact on those revisions.

A. Rule Revisions Implementing Source-Level Compliance

As noted above, on May 12, 2005, EPA finalized revisions to the Acid Rain Program rules to implement the allowance-holding requirement on a source-by-source, rather than on a unit-by-unit, basis. Specifically, these revisions require each source to hold (as of the allowance transfer deadline, which is generally March 1) an amount of allowances in its allowance tracking system account at least equal to the tonnage of SO_2 emissions for all Acid Rain Program units at the source for the preceding calendar year. These revisions replaced earlier Acid Rain Program rule language that instead required each unit to hold allowances in its own allowance tracking system account at least equal to the tonnage of SO_2 emissions for the unit in such calendar year.

For the reasons detailed in the Notice of Supplemental Proposal published on June 10, 2004 (69 FR 32,698–701) and adopted in the final rule published on May 12, 2005 (70 FR 25,296), EPA reaffirms its findings that: (1) Title IV is ambiguous concerning whether the allowance-holding requirement must be met on a unit-by-unit basis and so EPA has discretion in deciding what approach to adopt in the rules implementing Title IV; (2) it is important to provide additional compliance flexibility by allowing a unit at a source to use allowances from any other unit at the same source; and (3) many non-allowance-holding provisions of Title IV evidence a unit-by-unit orientation. For these reasons, as explained in the final CAIR (*id.*), EPA reaffirms its conclusion that the adoption of source-level compliance with the allowance-holding requirement reasonably balances these considerations. In balancing these considerations, EPA also reaffirms its conclusion that company-level compliance is not appropriate because it represents too much of a deviation from the unit-by-unit orientation in the non-allowance holding provisions of Title IV and is likely to require much more dramatic changes in the operation of the Acid Rain Program. *See* 69 FR 32,700. For example, company-level compliance would add to the compliance determination process complexities such as the need to identify the ''company'' in cases where owners or operators are organized using complex corporate or other ownership structures and to handle cases where ownership structures are changed, or units or sources are transferred among corporate or other entities, during the year. EPA notes that these conclusions about source-by-source compliance address only compliance with the allowance-holding requirement, not with the emissions monitoring and reporting requirements, which continue to be applied unit by unit.

Because language reflecting or referencing the unit-by-unit compliance approach was included in many provisions throughout the earlier Acid Rain Program rules, a significant number of rule revisions was necessary to implement source-by-source allowance holding. Other than implementing the shift from unit-to source-level compliance, the rule revisions did not make any substantive changes to the revised provisions. Examples of the revisions necessary to implement source-based compliance are as follows:

1. The term ''unit account'' was replaced by ''compliance account'' in § 72.2 and, as appropriate, in every other provision of the Acid Rain Program rules in which the term appeared. Similarly, references to a ''unit's'' account in the allowance tracking system were replaced by references to a ''source's'' account. In addition, references to allowances held by a ''unit'' were changed to refer to allowances held by a ''source.''

2. References to a ''unit's'' Acid Rain emissions limitation for SO_2 were replaced by references to a ''source's'' Acid Rain emissions limitation for SO_2 throughout the Acid Rain Program rules. Similarly, references to a ''unit's'' SO_2 emissions for purposes of applying the SO_2 emissions limitation (or a ''unit's'' excess emissions) were replaced, where appropriate, by references to the SO_2 emissions of the ''affected units at a source'' (or to a ''source's'' excess emissions).

3. The provisions in §§ 72.90(b)(5) and 73.35(e) concerning the assignment of allowance deductions, for compliance with the allowance-holding requirement, among units at a common stack were removed. These provisions were made unnecessary by the shift from unit-to source-level compliance because all units at a common stack are necessarily at the same source.

4. The terms ''compliance subaccount'', ''future year subaccount'', and ''current year subaccount'' and their definitions were removed or replaced, as appropriate, throughout the Acid Rain Program rules. The earlier rules distinguished between two subaccounts in each unit account, i.e., a ''compliance subaccount'' for allowances usable for compliance in a given year and a ''future year subaccount'' for allowances not usable until a future year. Similarly, the earlier rules referred to a ''current year subaccount'' and a ''future year subaccount'' of a general account. However, whether compliance was on a unit-or source-level, there was no need to use or refer to the subaccounts. In fact, the electronic allowance tracking system has never actually used subaccounts. *See* 69 FR 32,700. Consequently, for example, § 73.34(a) and (b)—providing that the allowance tracking system show in allowance accounts the holdings of allowances issued for 30 years and that each year the holdings of allowances issued for the new 30th year will be added—were revised to set forth these requirements without using the obsolete references to subaccounts.

5. The provision in § 73.35(b)(3) limiting the use of allowances from another unit at the same source for compliance was removed. In that provision, a unit that would otherwise have excess emissions was allowed to use a limited number of allowances from other units at the same source in order to reduce, but not to eliminate, the excess emissions. Such a limitation was unnecessary, and indeed was inconsistent, with source-based compliance.

6. The provision in § 74.4(c) allowing two designated representatives for the same source under certain circumstances was removed.[2] While it was workable to have one designated representative for a non-opt-in unit at a source and a different designated representative for an opt-in unit at the same source where compliance with the allowance-holding requirement was required on a unit-by-unit basis, EPA maintains that this is not workable where compliance is at the source-level and one individual must be responsible for compliance by all units at the source.

When EPA first proposed the Acid Rain Program rule revisions to implement source-based compliance, some commenters supported, and some opposed, the shift to source-by-source allowance holding. EPA addressed each of the comments opposing the change and reaffirms, in this notice, the responses to those comments. For

[2] In the Acid Rain Program rule revisions finalized in May 12, 2005 **Federal Register** notice certain language in § 74.4(c) was revised. However, in the revisions finalized in the April 28, 2006 **Federal Register** notice these § 74.4(c) revisions were superseded by entirely removing and reserving § 74.4(c) in light of the change from unit-to source-level compliance with the allowance-holding requirement. 71 FR 25379/2. While the April 28, 2006 rule revisions did not also remove all references to § 74.4(c), EPA is not reaffirming their promulgation since they refer to a non-existent provision (i.e., § 74.4(c)).

example, a commenter opposed the change claiming that a source-by-source allowance-holding requirement was ''contrary to market-based principles.'' In response, EPA rejected the comment, explaining that the adoption of source-by-source compliance preserves market-based principles. Whether compliance is unit-by-unit or source-by-source, the owner or operators of Acid Rain Program units still have the option to change or maintain emissions and/or to retain, purchase, or sell allowances and the responsibility to take whatever actions are necessary to ensure that enough allowances are held to cover emissions. The only difference between the types of actions taken under unit-level and source-level compliance is that, under unit-level compliance, the owners or operators must transfer an allowance from one unit at a source to a second unit at that source (except as discussed above concerning the removed § 73.35(b)(3)) in order to use the first unit's allowances for compliance by the second unit, while under source-level compliance, any allowance held for compliance can be used—without a transfer—for compliance by any units at the source. While fewer allowance transfers may be needed with source-level compliance, the market price of allowances still plays a crucial role in owners' or operators' decisions on what actions to take (including whether to transfer allowances between sources). *See* 70 FR 25,296–97.

As a further example, a commenter opposed a source-level compliance because the NO_X Budget Trading Program (established under the NO_X State Implementation Plan Call (NO_X SIP Call) and aimed at reducing ozone season emissions) uses unit-level compliance but allows owners or operators to establish source-level overdraft accounts, in which may be held extra allowances usable for compliance by any unit at the source. In response, EPA rejected the comment, explaining that, based on experience with the Acid Rain and the NO_X Budget trading programs, EPA concluded that a source-level allowance-holding requirement results in a less complicated program and a reduced likelihood of owners or operators making inadvertent, minor errors that could result in significant excess emissions penalties and yet still achieves the trading program's environmental goals. *See* 69 FR 32,699–700; and 70 FR 25,297.

As a further example, a commenter stated that EPA should revise the Acid Rain Program rules to allow owners or operators, each year, the option of choosing whether to use unit-level or source-level compliance. In response, EPA rejected the comment, explaining that such an approach would significantly complicate the achievement by owners or operators, and the determination by EPA, of compliance. The potential for error (e.g., due to erroneous assumptions about whether unit-or source-level compliance would be applicable to a particular source for a particular year) on the part of owners or EPA would be significantly increased. EPA concluded that the only reasonable options for the allowance-holding requirement in the Acid Rain Program were to require either compliance by all sources each year on a unit-level basis or compliance by all sources each year on a source-level basis. *See* 70 FR 25,297.

For the reasons discussed above (including the reasons for rejecting the comments opposing source-level compliance), EPA reaffirms its promulgation of the revisions implementing source-level compliance.

B. Rule Revisions Allowing use of Agents by Designated Representative and Authorized Account Representatives

As noted above, in the April 28, 2006 **Federal Register** notice that also finalized the CAIR FIPs, EPA finalized revisions to the Acid Rain Program rules clarifying that designated representatives, authorized account representatives, and alternates may use agents to make electronic submissions to the Administrator. The revisions in §§ 72.26 and 73.33(g) clarified this by making this option explicitly available and establishing procedures and requirements for such use of agents.

EPA reaffirms its conclusion that the Acid Rain Program rules, even without these revisions, already allowed designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions. Specifically, the Acid Rain Program rules provided before the revisions were adopted, and continue to provide, for certain submissions (i.e., certificates of representation, applications for general account, allowance transfers, and quarterly emissions reports) required to be ''in a format prescribed'' or ''in a format specified'' by the Administrator. (The terms ''prescribed'' and ''specified'' have the identical meaning in these contexts.) These submissions may be made, and in the case of quarterly emissions reports must be made, electronically. The electronic formats prescribed by the Administrator for the Acid Rain Program allowed before the revisions were adopted, and continue to allow, the designated representative, authorized account representative, or alternate, as appropriate, to designate other individuals (''agents'') who may make the electronic submissions for him and required that the designated representative, authorized account representative, or alternate be fully bound by the agent's actions. (EPA notes that the NO_X Budget Trading Program includes analogous regulatory provisions for electronic submissions to the Administrator and prescribes analogous electronic formats.) *See* 71 FR 25,363–64 and 25,365.

Consequently, EPA reaffirms its conclusion that the references in the Acid Rain Program (as well as the NO_X Budget Trading Program) rules to ''prescribed'' or ''specified'' formats, coupled with the existing electronic formats, provide the legal authority necessary for designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions to the Administrator. However, in order to remove any uncertainty about such legal authority and in order to provide more detail concerning the procedures and requirements for using agents, EPA also reaffirms the promulgation of the Acid Rain Program rule revisions that explicitly authorize, and govern, the use of agents for electronic submissions.

C. Rule Revisions Making Technical Changes

As noted above, in the May 12, 2005 and April 28, 2006 **Federal Register** notices that also finalized the CAIR and the CAIR FIPs, EPA finalized revisions to the Acid Rain Program rules making technical changes. In those notices, EPA generally categorized these technical revisions as changes that facilitated interaction among the trading programs administered by EPA under Title IV, the NO_X SIP Call, CAIR, and the CAIR FIPs. However, independent of any need to coordinate the Acid Rain Program with the CAIR and CAIR FIP trading programs, EPA maintains that these technical revisions streamline, and in some cases clarify, the requirements of the Acid Rain Program. Further, these revisions have been in effect, and used by, source owners, operators, designated representatives, and EPA since around mid-2006. Based on that experience with these technical revisions, EPA finds that they streamline and, in some cases, clarify the Acid Rain Program requirements without adversely affecting the achievement of, and compliance with, the emissions reductions required under Title IV. For reasons independent of CAIR and the

CAIR FIPs (including the above-stated reasons and the more detailed reasons discussed below), EPA reaffirms its promulgation of these revisions.

For example, some of the Acid Rain Program rule revisions clarified that EPA intended to use the original definition of ''cogeneration unit'' in § 72.2. EPA noted in the May 12, 2005 **Federal Register** notice that the Agency had recently changed the ''cogeneration unit'' definition in § 72.2 in June 2002 (67 FR 40394, 40420 (June 12, 2002)). The original definition in § 72.2 had been used since the commencement of the Acid Rain Program. The only significant difference between the original and revised definitions was that the former refers to a unit ''having the equipment used to produce'' electricity and useful thermal energy through sequential use of energy, while the latter simply refers to a unit ''that produces'' electricity and useful thermal energy in that manner. The reason that EPA gave for revising the definition in June 2002 was to conform with the definition in a rule issued under CAA section 126 related to the NO_X SIP Call. However, neither that rule nor the NO_X SIP Call actually specified a ''cogeneration unit'' definition. Consequently, there is no reason to use the June 2002 revised definition. Moreover, EPA is concerned that the change in the definition of ''cogeneration unit'' as of June 2002 may cause confusion or raise question about what units qualify for exemptions for ''cogeneration units'' from the Acid Rain Program. Under these circumstances, EPA concludes that the definition should be changed back to the original definition in § 72.2 and, in any event, intends to interpret the June 2002 revised definition as having the same meaning as the original definition.

As a further example, some Acid Rain Program rule revisions involved units meeting the requirements for new units and retired units exemptions under §§ 72.7 and 72.8. The revisions clarify that such units are treated as unaffected units under the Acid Rain Program but continue to be subject to any permitting requirements under parts 70 and 71 applicable to unaffected units.

As a further example, some Acid Rain Program rule revisions involved the certification that a designated representative must include with each submission made to the Administrator and the certificate of representation for a designated representative and an authorized account representative. The language in § 72.21(b)(1) for the certification of any submission by a designated representative and in § 72.24(a) and § 73.31(c)(1) for the certificates of representation was streamlined by removing extraneous language. Not only does this streamline the language, but also makes the certification and certificates of representation essentially the same as in the NO_X Budget Trading Program under the NO_X SIP Call, which allows use of essentially the same forms for the two trading programs.

As part of this streamlining of language, § 72.24(a)(5), (a)(7), and (a)(10) and an analogous provision in § 73.31(c)(1)(v), setting forth certain required provisions for the certificate of representation, were removed as unnecessary. Among other things, this results in removal of the requirement of 1-day newspaper notice for the selection of designated representatives for sources subject to the Acid Rain Program, which was required in addition to submission to the Administrator of the certification of such selection. EPA believes that this notice requirement is unnecessary because information on the identity of designated representatives (as well as authorized account representatives) for Acid Rain Program sources and allowance accounts is already available to the public, as well as State permitting authorities, through on-line access to the allowance tracking system. This availability 24 hours a day on the allowance tracking system seems to be a much better way of ensuring interested persons access to the information than publication of a single notice in a local newspaper of which interested parties may or may not become aware. Consequently, EPA maintains that the newspaper notice requirement is obsolete and unnecessary.

In addition, the provisions listing the content of a certificate of representation for a designated representative were revised to clarify that the identification of each unit covered by the certificate of representation includes identification and nameplate capacity of each generator served by the unit. EPA believes that the current rule language requiring ''identification'' of each unit subject to the trading program is already broad enough to encompass such information concerning each generator served by the unit, particularly since the nameplate capacity of each generator served by a unit may determine whether and to what extent the unit is subject to requirements under the Acid Rain Program. However, in order to remove any uncertainty, EPA concludes that the revised language should be adopted to make it clear that generator information is required in the certificate of representation.

In addition, some of the Acid Rain Program rule revisions were technical revisions to the provisions in § 72.23(c) concerning the reflection in certificates of representation of the owners and operators of the source and units involved. The changes make it clear that all owners and operators must be listed and that those that should be, but are not, listed are still bound by the certificate of representation.

EPA notes that the revised certification accompanying every submission and the revised certificate of representation have been widely used since mid-2006 without any adverse consequences. For all of the above reasons, EPA concludes that these streamlining and clarifying revisions concerning the certification and certificate of representation are appropriate for the Acid Rain Program.

As a further example of Acid Rain Program rule revisions, one revision involved elimination of the requirement in §§ 72.90 and 74.43 for owners and operators to submit an annual compliance certification report for each source. EPA notes that other provisions of the Acid Rain Program rules require designated representatives of owners and operators of sources subject to the Acid Rain Program to submit, with each quarterly emissions report, a certification that the monitoring and reporting requirements under part 75 of the Acid Rain Program rules have been met. *See* 40 CFR 75.64(c). The quarterly emissions reports are available on-line to the public and the States. In addition, owners and operators of Acid Rain Program sources must submit, under title V of the CAA, annual compliance certification reports concerning all CAA requirements, including all Acid Rain Program requirements. EPA also notes that it appears that, up to the time (around mid-2006) that the requirement to submit annual compliance certification reports under the Acid Rain Program was removed, few (if any) requests for copies of these annual compliance certification reports had been made by States or any other persons since the commencement of the Acid Rain Program. Apparently, other certifications and submissions required of owners and operators have been sufficient. Under these circumstances, EPA concludes that the separate Acid Rain Program annual compliance certification reports are duplicative and unnecessary.

As further examples of Acid Rain Program rule revisions, several involved removal of provisions in part 73 of those rules. One was the removal of § 73.32 (prescribing the contents of an allowance account), which has proved to be superfluous. Section 73.32 set forth a rather self-evident list of

information to be recorded in an allowance account in the allowance tracking system, such as the name of the authorized account representative, the persons represented by the authorized account representative, and the transfers of allowances in and out of the account. This section also stated that an allowance account must include a compliance or current year subaccount and a future year subaccount, as well as emissions information. Several items on this list of informational contents for allowance accounts are obsolete in that they do not reflect how the electronic allowance tracking system operated or will operate in the near future. As noted above, the electronic allowance tracking system has not actually ever used or referred to subaccounts. Also, emissions data, which, under § 73.32, were to be reflected in the allowance tracking system account, have always been available instead through the electronic emissions tracking system. Because the information list in § 73.32 contains either self-evident items or items that are obsolete and because the NO_X Allowance Tracking System has been operating successfully even though the NO_X Budget Trading Program rules lack a provision analogous to § 73.32, EPA concludes that § 73.32 should be removed.

Another provision removed in part 73 was § 73.33(c) requiring that the authorized account representative of a general account (i.e., an account for an entity (such as an allowance broker) other than an Acid Rain source) notify all owners of allowances in the account of any submissions made under the Acid Rain Program, unless the owner waived the requirement. EPA believes that, because the establishment of a general account (as distinguished from a compliance account) by owners of allowances is entirely discretionary, it is reasonable to leave it to those owners to determine whether and when they want notification from their authorized account representative.

Other provisions removed in part 73 were § 73.37(a) through (c) and (e) through (f). EPA concludes that these provisions should be removed because the claim of error procedure has never been used and so has proved to be superfluous. The provision in § 73.37(d), setting forth the Administrator's ability to correct, on his own motion, any type of error that he finds in an allowance tracking system account remains, renumbered as § 73.37.

Another provision removed in part 73 was § 73.51. Section 73.51 prohibited the transfer of allowances from a future year subaccount to a subaccount for an earlier year. The removal of this section is consistent with the elimination throughout the rest of the Acid Rain Program rules of any references to subaccounts. Further, the prohibition on using allowances allocated for a year to meet the allowance-holding requirement for a preceding year is retained in other provisions of the Acid Rain Program rules, e.g., §§ 72.9(c)(5) and 73.35(a)(1).

As further examples, §§ 73.50 and 73.52 were revised to remove superfluous language. Language referring to ''subaccounts'' was removed as obsolete. Language referring to allowance transfers in perpetuity was also removed since such transfers can be made under these sections without such language. Further, the requirement in § 73.50(b)(3)—that transfers of allowances, after the allowance transfer deadline but before completion of compliance determinations concerning the allowance-holding requirement, were not recorded until such completion if the transferred allowances were usable for compliance—was removed and then restated in § 73.52(b) without using the obsolete reference to compliance subaccounts.

EPA notes that these revisions to part 73 have been in effect since mid-2006 without any adverse consequences. For all of the above reasons, EPA concludes that these streamlining revisions are appropriate for the Acid Rain Program.

As a further example, the Acid Rain Program rule revisions included revising § 74.42. This section was revised to remove references of subaccounts and still preserve the existing requirement that allowances allocated for a future year for an opt-in unit cannot be transferred to another unit before completion of the determination of compliance with the allowance-holding requirement (including the deduction of allowances to account for the opt-in unit's emissions and reduced utilization). EPA concludes that these streamlining revisions are appropriate for the Acid Rain Program.

D. Identification of Specific Rule Revisions Whose Promulgation is Reaffirmed

In this interim final rule, EPA is reaffirming the promulgation of all of the revisions of the Acid Rain Program rules that were finalized in the May 12, 2005 final rulemaking notice that also finalized CAIR (70 FR 25,333–39) and the April 28, 2006 final rulemaking notice that also finalized the CAIR FIPs (71 FR 25,377–80) *except* the following revisions:

1. For § 72.2, item 2.l (70 FR 25,334/1 (adding language referencing § 74.4(c), which is entirely removed and reserved in the revisions in the April 28, 2006 notice));

2. For § 73.35, item 9.f (70 FR 25,335/3 (adding a new paragraph providing that an allowance deducted or otherwise permanently retired in accordance with CAIR or the CAIR FIPs is not available for compliance with the allowance-holding requirement in the Acid Rain Program));

3. For § 74.4, item 2.b (70 FR 25,336/3 (revising § 74.4(c)(2), which is entirely removed and reserved in the revisions in the April 28, 2006 notice));

4. For § 74.40, in item 4.b, the addition of the language ''or the opt-in source has, under § 74.4(c), a different designated representative than the designated representative for the source'' (70 FR 25,336/3 (adding language referencing § 74.4(c), which is entirely removed and reserved in the revisions in the April 28, 2006 notice));

5. For § 78.1, items 3.a and 3.c (70 FR 25,338/1 (referencing the CAIR model trading rules, subparts AA through IIII of part 96));

6. For § 78.3, items 4.a through 4.d (70 FR 25,338/2–3 and 25,339/1 (adding language referencing the CAIR designated representative, the CAIR authorized account representative, and the CAIR model trading rules, subparts AA through IIII of part 96));

7. For § 78.4, item 5 (70 FR 25,339/1 (adding language referencing the CAIR designated representative and the CAIR authorized account representative));

8. For § 78.12 item 7.b (70 FR 25,339/1 (adding language referencing the CAIR permit));

9. For § 78.1, item 2.b (71 FR 25,379/2 (adding language referencing the CAIR FIPs trading rules, subparts AA through IIII of part 97)); and

10. For § 78.3, items 3.a through 3.c (71 FR 25,379/3 and 25,380/1–2 (adding language referencing the CAIR FIPs trading rules, subparts AA through IIII of part 97)).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to review under the Executive Order. In this action, EPA is simply reaffirming the promulgation of Acid Rain Program rule revisions that were previously issued and are currently in effect and have been since mid-2006.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule

simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR Parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden. Moreover, EPA maintains that the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, e.g., by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an 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. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act and CAA section 307(d), it is not subject to the regulatory flexibility provisions of the RFA.

D. 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, the effect of these revisions was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This 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. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

F. 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 9, 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.'' This rule does not have tribal implications, as specified in Executive Order 13175. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did 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. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''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, the Agency 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 the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

This rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not based on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled ''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.

I. National Technology Transfer 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 EPA 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. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 15, 2008 for good cause found as explained in Section II of this preamble.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–29382 Filed 12–12–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070920529–81555–02]

RIN 0648–AW05

Magnuson–Stevens Act Provisions; Limited Access Privilege Programs; Individual Fishing Quota Referenda Guidelines and Procedures for the New England Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the National Marine Fisheries Service

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing guidelines and procedures for the New England Fishery Management Council (NEFMC) and the Gulf of Mexico Fishery Management Council (GMFMC)(collectively the Councils) and NMFS to follow in determining procedures and voting eligibility requirements for referenda on Individual Fishing Quota (IFQ) program proposals in accordance with the Magnuson–Stevens Fishery Conservation and Management Act, as amended (Magnuson–Stevens Act). The intended effect of these procedures and guidance is to help develop IFQ program referenda in the New England and Gulf of Mexico fisheries that are fair and equitable.

DATES: This rule is effective January 14, 2009.