

§ 201.10 Requirements and Procedures.

(a) Every person operating or desiring to operate as a market agency or dealer as defined in section 301 of the Act (7 U.S.C. 201) must apply for registration. To apply, such persons must file a properly executed application for registration on a form furnished by the Agency. Each applicant must file an application for registration with the regional office for the region where the applicant has his or her primary place of business, and file and maintain a bond as required in §§ 201.27 through 201.34 (9 CFR 201.27 through 201.34).

(b) If, upon review of an application, the Administrator has reason to believe the applicant is unfit to engage in the activity for which application has been made, a proceeding shall be instituted promptly affording the applicant the opportunity for a full hearing, in accordance with the Department's Rule of Practice Governing Formal Adjudicatory Proceedings (7 CFR Subpart H), to show cause why the application for registration should not be denied. If after the hearing the application is denied, as soon as the issue(s) that formed the basis of the denial have been remedied, the applicant may file a new application for registration.

(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer is subject to the regulation requirements of this section. Such person must be registered as a dealer to purchase livestock for slaughter on behalf of the packer.

(d) Every person clearing or desiring to clear the buying operations of other registrants must apply for registration as a market agency providing clearing services by filing a properly executed application on a form furnished by the Agency, and file and maintain a bond as required in §§ 201.27 through 201.34.

(e) If an application for registration is granted, a market agency or dealer receives an acceptance letter from the Agency that issues the registration number and the effective date of the registration. Each registration issued in accordance with this section will not expire, provided that the registrant timely files its annual report with the Agency as required in section 201.97. Failure of a registrant to file an annual report by the date required in section 201.97 will result in the issuance of a default notice. Thirty days after receipt of the default notice, the registration will expire if the Agency does not receive an annual report from the registrant. A registrant who fails to renew its registration in a timely manner, and continues to operate, will

be engaged in business subject to the Act without a valid registration in violation of section 303 of the Act (7 U.S.C. 203).

(f) Registrations that expire during a period of suspension imposed as a result of an order or injunction may be renewed, but the renewal will not be effective until the specified suspension period terminates.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

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DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 740**

[Docket No. 0812241645-91422-01]

RIN 0694-AE52

Revisions to License Exception GOV To Provide Authorization for Exports and Reexports of Commodities for Use on the International Space Station (ISS)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR or Regulations) by revising an existing license exception to provide a new authorization for exports and reexports of certain commodities subject to the EAR when those commodities are intended for use on the International Space Station (ISS). This rule establishes specific terms and conditions with which exports or reexports must comply in order to take advantage of the new authorization. For example, an export or reexport undertaken in accordance with the new authorization must be consigned to an eligible recipient involved in the launch of the commodity to the ISS. This new authorization is limited to commodities that are subject to the EAR that are needed at a launch destination outside the United States on short notice. This rule defines 'short notice' as a requirement to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and

purpose for use of the commodity on the ISS. This rule defines 'hatch-closure (final stowage)' as the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. BIS has determined there is a low risk of diversion and a high benefit for authorizing these types of transactions to proceed under a license exception.

DATES: Effective Date: This rule is effective February 9, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694-AE52, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include "RIN 0694-AE52" in the subject line of the message.

Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694-AE52.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694-AE52)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Senior Engineer/Licensing Officer, Office of National Security and Technology Transfer Controls, telephone: (202) 482-2984.

SUPPLEMENTARY INFORMATION:**Background**

This rule adds a new paragraph (d) to License Exception GOV in 15 CFR 740.11 (Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV)) to provide authorization for the export or reexport of certain commodities subject to the

EAR for use on the International Space Station (ISS). BIS has determined there is a low risk of diversion and a high benefit for authorizing these types of transactions to proceed under a license exception. This rule also updates the heading and introductory text of the section to reflect this new authorization.

What is the ISS?

The ISS is a research facility currently being assembled in outer space, the on-orbit construction of which began in 1998. The ISS is in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. It is a joint project among the space agencies of the United States, Russia, Japan, Canada, Europe and Italy. (The Italian Space Agency has separate contracts for various activities not done under the framework of the European Space Agency's (ESA) works.) The ISS is nearing completion of assembly, and is planned to remain in operation until at least 2016.

What has been the U.S. Government's involvement with the ISS?

The U.S. Government participation in this joint project includes developing and supplying many items that are used on the ISS, including many items that are subject to the jurisdiction of the EAR. For example, commodities subject to the EAR that are classified under Export Control Classification Number (ECCN) 9A004 (Space launch vehicles and "spacecraft") are used on the ISS, as are many other items subject to the Regulations. The U.S. Government, via the National Aeronautics and Space Administration (NASA), has international obligations pertaining to the ISS, including providing the overall program management and coordination for the design and development of the ISS and serving as the prime integrator for the ISS.

Why is this new authorization needed under License Exception GOV?

The ISS is serviced primarily by the U.S. Space Shuttle and the Russian manned Soyuz spacecraft and unmanned Progress spacecraft. However, NASA has announced its intention to discontinue the U.S. Space Shuttle program in the near future, so the ISS will have to rely increasingly on the Russian Soyuz and Progress spacecraft and other non-U.S. spacecraft, such as ESA's Automated Transfer Vehicle (ATV) and Japan's H-II Transfer Vehicle (HTV), until additional U.S. delivery vehicles become available. On March 9, 2008, ESA launched its first Automated Transfer Vehicle (ATV) to the ISS via its

Ariane 5 launch system, with other ATVs to follow. On September 10, 2009 (EDT), Japan launched its first of several HTVs to the ISS via its H-IIB launch vehicle. Because certain items used on the ISS are subject to the EAR, the Commerce Department and other agencies of the U.S. Government involved in reviewing BIS export license applications have worked with NASA when export licenses have been required for items eventually destined to the ISS, but launched from a foreign country. For example, commodities subject to the EAR classified under ECCN 9A004 are controlled for NS1 reasons, meaning they are subject to a license requirement when exported or reexported to Russia. However, even when BIS license applications are given expedited review, there are certain processing time constraints that cannot be overcome (i.e., even with expedited review, the minimum time necessary for BIS to process and approve the license application may not be fast enough to accommodate certain launch opportunities).

Given the unique environment in which the ISS exists, and the potential threat to its residents posed by even the most basic part wearing out or breaking, it is essential that NASA and other official suppliers of items used on the ISS be able to export or reexport those items when they are needed to supply or repair the ISS. The U.S. Government is committed to safety of flight and has various provisions under the EAR to help ensure safety of flight for civil aircraft. The ISS is unique in that it is constantly in operation and, therefore, the safety of flight concerns are significantly increased when any issues arise with parts or components used on the ISS. This engenders a need for a more expedited process to authorize these specific transactions for commodities that need to be delivered to the ISS as soon as possible.

What types of changes are made to the EAR?

In § 740.11 (Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV)), this rule adds a paragraph (d) to provide a new authorization for the export or reexport of commodities subject to the EAR that are classified under ECCN 9A004 for use on the ISS. Specifically, this rule provides a new authorization for commodities classified under ECCN 9A004 that are subject to the EAR that are needed at a launch destination outside of the U.S. on short notice. This rule defines 'short notice' as a requirement to have a commodity

manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. 'Hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. As noted above, in many cases, the commodities being exported or reexported under these provisions will be needed for a launch destined to the ISS within days, not months. To provide for unexpected delays in a launch schedule, such as for mechanical failures in a launch vehicle or weather related delays, this rule authorizes the retention of the commodities at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned, or a license application be submitted to BIS for further disposition of the commodity(ies). This rule also provides for a one-time six (6) month extension of this time limit provided the exporter or the person that has control of the items submits written notification to BIS requesting a six (6) month extension and noting the reason for the delay.

What commodities may be exported or reexported under this new authorization?

Only commodities classified under ECCN 9A004 that are subject to the EAR are eligible to be exported or reexported under this new paragraph of License Exception GOV.

The following commodities are among those that may not be exported or reexported under this new authorization:

Parts and components used by overseas manufacturers in the construction, assembly, fabrication, etc. of items used on the ISS. The export or reexport of parts and components to overseas manufacturers must be duly authorized by other provisions of the EAR; and

Any commodity restricted by the provisions of § 740.2 (Restrictions on All License Exceptions) of the EAR.

Who may export or reexport under this new authorization?

In the vast majority of cases, the commodities exported for missions to the ISS will be exported by NASA to the launch countries. However, to account

for certain times when a NASA supplier may need to export or reexport a commodity to a launch destination outside of the U.S., this exception is not limited to NASA as the exporter or reexporter.

What destinations are eligible to receive commodities under this new authorization?

Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

When may this authorization be used?

There must also be a requirement to have a commodity at the scheduled launch site for hatch-closure (final stowage) no more than 45 days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. Acceptable forms of written notification include, but are not limited to: Email, fax, or letter. Exporters and reexporters must retain a record as per the Recordkeeping requirements in part 762 of the EAR of this written notification requesting that specific commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (i.e., the day on which the 45-day clock begins under paragraph (d) of this section).

What space launch vehicles (SLVs) are eligible?

This new authorization is limited to commodities that will be delivered to the ISS using United States, Russian, French (ESA), or Japanese space launch vehicles (SLVs). SLVs from any other countries are specifically excluded from this new authorization, even if one of those countries were to appear on NASA's list as an eligible destination.

Who may receive commodities under this new authorization?

The persons who may receive or have access to commodities authorized under this new paragraph (d) are limited to eligible recipients involved in the launch of the commodities to the ISS. An eligible recipient may be the space agency of one of the member countries of the ISS project, but may also be other persons who are acting on behalf of one

of those member countries in support of the ISS. For example, the Russian company S.P. Korolev Rocket and Space Corporation Energia coordinates the launch of items to the ISS from Russia, so it is an eligible recipient even though it is not a space agency. This rule specifically excludes from the list of eligible recipients any national of a country listed in Country Group E:1 in Supplement No. 1 to part 740. In addition, no person may receive commodities authorized under paragraph (d) if that person is subject to any end-user or end-use control described in part 744 of the EAR, including the Entity List in Supplement No. 4 to part 744.

Finally, this rule adds recordkeeping requirements with which persons using paragraph (d) of License Exception GOV must comply in order to use this new authorization.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694-0088, "Multi-Purpose Application," form BIS-748. This collection carries a burden hour estimate of 58 minutes to prepare and submit. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the PRA and OMB control number 0694-0088 are expected to increase slightly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed

rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. See 5 U.S.C. 553(a)(1). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 740 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 740.11 is amended:

- a. By revising the heading of the section;
- b. By revising the introductory text of the section; and
- c. By adding paragraph (d), to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

* * * * *

(d) *International Space Station (ISS)*—(1) *Scope.* This paragraph (d) authorizes exports and reexports required on short notice of certain commodities subject to the EAR that are classified under ECCN 9A004 to launch sites for supply missions to the International Space Station (ISS). The ISS is a research facility in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. The ISS is a joint project among the space

agencies of the United States, Russia, Japan, Canada, Europe and Italy.

(2) *Eligible commodities.* Any commodity subject to the EAR that is classified under ECCN 9A004 and that is required for use on the ISS on short notice.

Note 1 to paragraph (d)(2): This license exception is not available for the export or reexport of parts and components to overseas manufacturers for the purpose of incorporation into other items destined for the ISS.

Note 2 to paragraph (d)(2): For purposes of this paragraph (d), 'short notice' means the exporter is required to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. For purposes of this paragraph (d), 'hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. That notification must be kept in accordance with paragraph (d)(6) of this section and the Recordkeeping requirements in part 762 of the EAR.

(3) *Eligible destinations.* Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

(i) *Authorization to retain commodity at or near launch site for up to six months.* If there are unexpected delays in a launch schedule for reasons such as mechanical failures in a launch vehicle or weather, commodities exported or reexported under the provisions of this paragraph (d) are authorized to be retained at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned to the exporter or reexporter, or be the subject of an individually validated license request submitted to BIS to authorize further disposition of the commodities.

(ii) *Authorization to retain commodity abroad at launch country beyond six months.* If, after the commodity is exported or reexported under this authorization, a delay occurs in the launch schedule that would exceed the 6-month deadline in paragraph (d)(3)(i) of this section, the exporter or reexporter or the person in control of the commodities in the launch country may request a one-time 6-month

extension by submitting written notification to BIS requesting a 6-month extension and noting the reason for the delay. If the requestor is not contacted by BIS within 30 days from the date of the postmark of the written notification and if the notification meets the requirements of this subparagraph, the request is deemed granted. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter or reexporter, the name and address of the person who has control of the commodity, the date the commodities were exported or reexported, a brief product description, and the justification for the extension. To retain a commodity abroad beyond the time authorized by paragraph (d)(3)(i) of this section, the exporter, reexporter or person in control of the commodity must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 6-month extension period.

(C) *Items not delivered to the ISS because of a failed launch.* If the commodities exported or reexported under this paragraph (d) of this section are not delivered to the ISS because a failed launch causes the destruction of the commodity prior to its being delivered, exporters and reexporters must make note of the destruction of the commodities in accordance with the recordkeeping requirements under paragraph (d)(6)(ii) of this section and part 762 of the EAR.

(4) *Requirement for commodities to be launched on an eligible space launch vehicle (SLV).* Only commodities that will be delivered to the ISS using United States, Russian, ESA (French), or Japanese space launch vehicles (SLVs) are eligible under this authorization. Commodities to be delivered to the ISS using SLVs from any other countries are excluded from this authorization.

(5) *Eligible recipients.* Only persons involved in the launch of commodities to the ISS may receive and have access to commodities exported or reexported pursuant to this paragraph (d), except that:

(i) No commodities authorized under paragraph (d) of this section may be exported, reexported or transferred (in-country) to any national of an E:1 country listed in Supplement No. 1 to part 740 of the EAR, and

(ii) No person may receive commodities authorized under paragraph (d) of this section if they are subject to an end-user or end-use control described in part 744 of the

EAR, including the entity list in Supplement No. 4 to part 744.

(6) *Recordkeeping requirements.* Exporters and reexporters must maintain records regarding exports or reexports made using the authorization in paragraph (d) of this section as well as any other applicable recordkeeping requirements under part 762 of the EAR.

(i) Exporters and reexporters must retain a record of the initial written notification they received requesting these commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (*i.e.*, the day on which the 45-day clock begins under paragraph (d) of this section). 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS.

(ii) Exporters and reexporters must maintain records of the date of any exports or reexports made using the authorization in paragraph (d) of this section *and* the date on which the commodities were launched into space for delivery to the ISS. If the commodities exported or reexported under paragraph (d) of this section are not delivered to the ISS because of a failed launch whereby the item is destroyed prior to being delivered to the ISS, this must be noted for recordkeeping purposes.

(iii) The return or destruction of defective or worn out parts or components exported pursuant to paragraph (d) of License Exception GOV is not required under this authorization. However, if defective or worn out parts or components originally exported or reexported pursuant to this paragraph (d) are returned from the ISS, then those parts and components may be either: returned to the original country of export or reexport; destroyed; or reexported or transferred (in-country) to a destination that has been designated by NASA for conducting a review and analysis of the defective or worn part or component. Documentation for this activity must be kept for recordkeeping purposes. No commodities that are subject to the EAR may be returned to a country listed in Country Group E:1 in Supplement No. 1 to part 740 or to any person if that person is subject to an end-user or end-use control described in part 744 of the EAR under the provisions of this paragraph (d)(6)(iii) of this section or any other provision of this paragraph (d) of this section. For purposes of paragraph (d) of this section, a 'defective or worn out' part or component is a part or component that

no longer performs its intended function.

(7) *Reexports to an alternate launch country.* If a mechanical or weather related issue causes a change from the scheduled launch country to another foreign country after a commodity was exported or reexported under this paragraph (d), then that commodity may be subsequently reexported to the new scheduled launch country, provided all of the terms and conditions of paragraph (d) of this section are met, along with any other applicable EAR provisions. In such instances, the 6-month time limitation described in paragraph (d)(3)(i) of this section would start over again at the time of the subsequent reexport transaction. Note that if the subsequent reexport may be made under the designation No License Required (NLR) or some other authorization under the EAR, a reexporter does not need to rely on the provisions contained in this paragraph (d).

Dated: February 1, 2010.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2010-2579 Filed 2-8-10; 8:45 am]

BILLING CODE 3510-33-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0706; FRL-9111-5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Removal of NO_x SIP Call Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision removes West Virginia's nitrogen oxides (NO_x) SIP Call rules. EPA is approving this revision to remove West Virginia's NO_x SIP Call rules in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 12, 2010 without further notice, unless EPA receives adverse written comment by March 11, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-

R03-OAR-2009-0706 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0706, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2009-0706. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

On July 20, 2009, the State of West Virginia submitted a formal revision to its SIP. The SIP revision removes West Virginia's NO_x SIP Call rules. West Virginia's NO_x SIP Call rules, approved into the West Virginia SIP on May 10, 2002 (67 FR 31733) and September 28, 2006 (71 FR 56881), established West Virginia's NO_x Budget Trading Program and set forth requirements for its non-trading sources, respectively. The former enabled West Virginia to participate in the EPA-administered regional NO_x budget trading program under the NO_x SIP Call. However, EPA discontinued the NO_x SIP Call trading program after the 2008 ozone season, and starting in 2009, began administration of the trading programs under the Clean Air Interstate Rule (CAIR). CAIR established three separate emissions trading programs. One of these, the CAIR ozone season NO_x trading program, applies to the electric generating units (EGUs) that are subject to the NO_x SIP Call but does not apply to the non-EGUs that were also trading sources under the NO_x SIP Call. To help States address these sources, CAIR provided States with the flexibility to include the non-EGUs as part of their CAIR ozone season NO_x trading program. West Virginia chose to bring these non-EGUs into its CAIR ozone season NO_x trading program by including them in regulation 45CSR40—Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides CAIR. In addition, West Virginia chose to recodify the provisions for its non-trading non-EGUs (internal combustion engines and cement kilns) that were