

**TENTATIVE AGENDA AND MINIBOOK
STATE AIR POLLUTION CONTROL BOARD MEETING
FRIDAY, JANUARY 27, 2006**

**DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A COX ROAD
GLEN ALLEN, VA**

Convene - 10:00 A.M.

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| I. State Advisory Board on Air Pollution Reports | Holmes | |
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| V. Other Business | | |
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Adjourn

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

Pooling Minutes: Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: cmberndt@deq.virginia.gov.

PROPOSED AMENDMENTS TO REGULATIONS CONCERNING CLEAN AIR MERCURY RULE (9 VAC 5 CHAPTERS 60 AND 140, REV. F05) (DEQ Proposal – December 2005) -

Regulation Development Report and Request to Publish Proposal for Public Comment: On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. The rule is designed to reduce the regional deposition of mercury and its subsequent entry into the food chain. The final rule calls for an interim cap of 38 tons per year (tpy) of mercury emissions by 2010 and a second-phase cap of 15 tpy by 2018 (current emissions are approximately 48 tpy). CAMR is effective July 11, 2005, and the plans and associated regulations to implement the CAMR are due November 17, 2006.

The CAMR establishes “standards of performance” limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap, due in 2010, is 38 tons and emissions will be reduced by taking advantage of “co-benefit” reductions – that is, mercury reductions achieved by reducing sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

In the CAMR, EPA has assigned each state an emissions “budget” for mercury, and each state must submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR includes emissions guidelines for the affected coal-fired utility units. States have some flexibility in how they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

Virginia's budget portions of the national annual emissions caps are 0.592 tons in 2010 and 0.234 tons in 2018.

The Department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

This regulatory action encompasses the addition of one new part to 9 VAC 5-140 and one new article to 9 VAC 5-60, each of which is addressed below. The numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 60 [9 VAC 5-60-XXX] or 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

Coal Fired EGUs (Electric Steam Generating Units) [Part V of 9 VAC 5 Chapter 140]

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [4040]
2. The control period is January 1 through December 31 of each year. [4020, definition of “control period”]
3. The Hg budgets for EGUs are (i) 0.592 tons (1,184 lb.) for each control period in 2010 through 2014 and (ii) 0.234 tons (468 lb.) for each control period in 2015 and thereafter. [4100]
4. A new unit set-aside budget is included consisting of 5.0% of the EGU budget for each control period in 2010 through 2014 or 3.0% for each control period in 2015 and thereafter. [4020, definitions of “new unit set-aside budget” and “set-aside percentage”]
5. A public health set-aside budget to retire allowances is included consisting of 5.0% of the Hg budget for each control period in 2010 and thereafter. [4020, definitions of “public health set-aside

budget" and "set-aside percentage"]

6. Existing units are those commencing operation prior to January 1, 2001. [4120 A 1 a]
7. New units are those commencing operation on or after January 1, 2001. [4120 A 1 b]
8. Initial allocations (2010 – 2014) for existing EGUs are issued on November 30, 2006 and based on the adjusted heat input normalized over the state budget. [4110 A; 4120 A 1 a and 2 a, and B]
9. Subsequent allocations (2015 and thereafter) for existing EGUs are issued annually beginning October 31, 2009, six years in advance; and based on the adjusted heat input. [4110 B; 4120 A 1 a and 2 a, and B]
10. Allocations for existing EGUs are calculated using the heat input, determined by averaging the three highest years of the years 2000 through 2004. [4120 A 1 a and 2 a]
11. Initial allocations (2010) for new EGUs are issued on October 31, 2010 and based on electrical output normalized over the new unit set-aside budget. [4110 C; 4120 A 1 b and 2 b, C and D]
12. Subsequent allocations (2011 and thereafter) for new EGUs are issued annually beginning October 31, 2011 and based on the first five years of electrical output. [4110 C; 4120 A 1 b and 2 b, C and D]
13. Allocations for new EGUs are calculated using the converted heat input (electrical output), determined by averaging the three highest years of the first five years of operation. [4120 A 1 b and 2 b]
14. Compliance is determined by comparing the amount of allowances issued to the owner with the total amount of emissions from all of the affected units located in the Commonwealth. [4060 A and C]
15. Use of allowances other than those allocated to the unit by the board may not be used to comply; except that those units under common control may sum the emissions and allowances from the affected units to determine compliance. [4060 A 3 and 4070]
16. All sources must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [4060 B]

Non EGUs [Article 6 of Part II of 9 VAC 5 Chapter 60]

1. The rule applies to all stationary sources, with some exemptions as noted below. [400 A]
2. Exempt sources include: [400 C]
 - A. Sources that have a potential to emit equal to or less than 0.000825 lb/hr or 7.25 lb/yr;
 - B. Generators or boilers that burn only natural gas, propane, or kerosene; and
 - C. Coal-fired EGUs and quarry or stone crushing operations.
3. The rule prohibits any emissions of mercury in such quantities as to cause, or contribute to, any adverse environmental impact. [420]
4. State operating permits will be used as the legally enforceable administrative mechanism to implement the rule. [430]
5. The rule allows the board to request such information as may be necessary to implement the rule and this information is to be submitted within 180 days. [440 A]
6. The rule allows the board to request stack tests as may be necessary to implement the rule and the results are to be submitted within 60 days. [440 B]
7. The rule allows the board to request an environmental assessment in order to determine if the source may cause, or contribute to, any adverse environmental impact. [450 A]
8. If the board believes, and notifies an owner, that the source may discharge emissions of mercury in such quantities as to cause, or contribute to, any adverse environmental impact, the owner shall choose one or more of the following options: [460 A]
 - A. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to any adverse environmental impact.
 - B. Control the emissions from the source (i) to a level such that the emissions from the facility do not, and will not, cause, or contribute to any adverse environmental impact or (ii) to a level that reflects the degree of emission limitation and the percentage reduction achievable through application of the best system of continuous emission reduction.

C. Demonstrate that a technology for the control of the emissions is unavailable and that no emission reduction can be achieved.

9. An owner has 45 days to notify the board as to which option in 8 A-C it will select and twelve months to submit a plan complete with schedule for the option chosen. [460 B]

10. Sources that choose options 8 A or C will, prior to the decision of the board on the acceptability of the demonstration, be subject to public participation procedures. [460 B]

Comparison of Regulation Amendments with Ad Hoc Advisory Group Proposal

Because the ad hoc advisory group did not reach consensus on any regulatory issue, there are no recommendations as to the content of the regulation.

ADDITIONAL MATERIAL FOR JANUARY 27, 2006 MEETING:

On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. The rule is designed to reduce the regional deposition of mercury and its subsequent entry into the food chain. The final rule calls for an interim cap of 38 tons per year (tpy) of mercury emissions by 2010 and a second-phase cap of 15 tpy by 2018 (current emissions are approximately 48 tpy). CAMR is effective July 11, 2005, and the plans and associated regulations to implement the CAMR are due November 17, 2006.

The CAMR establishes “standards of performance” limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap, due in 2010, is 38 tons and emissions will be reduced by taking advantage of “co-benefit” reductions – that is, mercury reductions achieved by reducing sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

In the CAMR, EPA has assigned each state an emissions “budget” for mercury, and each state must submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR includes emissions guidelines for the affected coal-fired utility units. States have some flexibility in how they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

Virginia's budget portions of the national annual emissions caps are 0.592 tons in 2010 and 0.234 tons in 2018.

At the December 2005 Board meeting, the Department requested that the Board authorize the Department to promulgate a proposal for public comment. The proposal consists of (i) Part V of 9 VAC 5 Chapter 140 covering Coal Fired EGUs (Electric Steam Generating Units) to meet the federal requirements and Virginia's environmental needs and (ii) Article 6 of Part II of 9 VAC 5 Chapter 60 (covering Non-EGUs) to meet Virginia's environmental needs. The Board delayed action on the proposal and asked the Department to present information on an additional proposal promulgated by STAPPA prior to taking action on the proposal. This agenda item provides the requested information and intended to be a supplement to the material related to Rev. F05 provided for the December 2005 Board meeting.

The Department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act and meet Virginia's environmental needs.

Summary of Draft Regulation Amendments

This regulatory action encompasses the addition of one new part to 9 VAC 5-140 and two new articles to 9 VAC 5-60, each of which is addressed below. The numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 60 [9 VAC 5-60-XXX] or 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

STAPPA Rule [Article 7 of Part II of 9 VAC 5 Chapter 60]

1. The regulation applies to coal-fired electric generating units (EGUs) with a nameplate capacity of more than 25 MWe which produce electricity for sale. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [500, 510 - definition of “electric generating unit”]
2. The regulation does not apply to cogeneration units that serve a generator with nameplate capacity greater than 25 MWe unless more than one-third of the unit’s potential electric output is distributed for sale. Nor does it apply to solid waste incinerators combusting municipal waste and subject to other federal and state regulations. [500]
3. Compliance for both new and modified units is determined based on a rolling 12-month basis. [520]
4. New and modified units must demonstrate compliance with one of the following standards:
Output-based standard of 0.0060-0.0025 lb/GWh; or
Minimum 90-95 percent capture of inlet mercury. [520 A 1]
5. The board shall review the new and modified standards within five years of adoption and subsequent five-year intervals to determine if additional reductions are possible. [520 A 2]
6. Existing units must meet emissions standards in two phases unless the choice is made to comply with the requirements of 520 C. [520 B]
7. Existing units must demonstrate compliance with one of the following Phase 1 standards, beginning January 1, 2009:
Output-based standard of 0.010 lb/GWh; or
Minimum 80-percent capture of inlet mercury. [520 B 1 a]
8. Owners may demonstrate compliance with Phase 1 by averaging all existing units he owns within the Commonwealth. [520 B 1 b]
9. Existing units must demonstrate compliance with one of the following Phase 2 standards, beginning January 1, 2013:
Output-based standard of 0.0060 -0.0025 lb/GWh; or
Minimum 90-95 percent capture of inlet mercury. [520 B 2 a]
10. Owners may demonstrate compliance with Phase 2 by averaging all existing units he owns at a single electric generating plant. [520 B 2 b]
11. Existing units must meet emissions standards in two phases unless the choice is made to comply with the requirements of 520 B. [520 C]

12. Existing units must demonstrate compliance with one of the following Phase 1 standards, beginning January 1, 2009:

- Output-based standard of 0.0060 -0.0025 lb/GWh; or
- Minimum 90-95 percent capture of inlet mercury. [520 C 1 a]

13. Owners may choose to postpone compliance with the Phase 1 standard for a group of its units that comprise not more than 50% of the owner's electric generation capacity and instead comply with the Phase 2 multi-pollutant standards of 520 C 2. Owners choosing to comply with the multi-pollutant requirements must enter into enforceable commitments to:

- Comply with the Phase 2 standard by January 1, 2013, and
- Prevent increases of oxidized mercury emissions from effective date of this regulation through December 31, 2012. [520 C 1 b]

14. Existing units must demonstrate compliance with the following Phase 2 multi-pollutant standards, beginning January 1, 2013:

- Sulfur dioxides: Output-based standard of 1.5 lb/MWh; or
Minimum 95 percent capture of fuel sulfur
- Nitrogen oxides: Output-based emission standard of 1.0-0.7 lb/MWh
- Mercury: Output-based standard of 0.0060 -0.0025 lb/GWh; or
Minimum 90-95 percent capture of inlet mercury
Compliance based on a rolling 12 month basis
- Particulate matter: Emission standard of 0.030 – 0.015lb/mmBtu;
Compliance based on testing once per year. [520 C 2 a and b]

15. If a unit is owned or operated by more than one entity, the board will, for purposes of demonstrating compliance with the emission standards by averaging emissions at any electric generating plant, allocate to each owner or operator an appropriate portion of the generation from the unit to each owner or operator. [520 D]

16. Existing units, if using SCR, are to take measures to avoid any increase emissions of oxidized forms of mercury. [520 E]

17. Owners must apply for a mercury emissions permit for each unit within 6 months of effective date. [530 A]

18. The permit application must contain the following information:

- A commitment to comply with the applicable emission standards for each unit.
- Compliance plan.
- Fuel assumptions.
- Whether catalytic reduction device is or will be installed and what measures taken to avoid any increase emissions of oxidized forms of mercury. [530 B]

19. The permit issued will contain terms and conditions as necessary to ensure compliance with:

- Applicable emissions standards for each unit: either new unit standards, existing unit standards, or multi-pollutant standards fro affected facilities.
- The application information.
- Applicable monitoring, recordkeeping and reporting requirements. [530 C]

20. All units must meet the monitoring, recordkeeping and reporting requirements of 40 CFR Parts 60 and 75. [560 and 570]

Hg Budget Rule [Part V of 9 VAC 5 Chapter 140]

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [4040]
2. The control period is January 1 through December 31 of each year. [4020, definition of "control period"]
3. The Hg budgets for EGUs are (i) 0.592 tons (1,184 lb.) for each control period in 2010 through 2014 and (ii) 0.234 tons (468 lb.) for each control period in 2015 and thereafter. [4100]
4. A new unit set-aside budget is included consisting of 5.0% of the EGU budget for each control period in 2010 through 2014 or 3.0% for each control period in 2015 and thereafter. [4020, definitions of "new unit set-aside budget" and "set-aside percentage"]
5. A public health set-aside budget to retire allowances is included consisting of 5.0% of the Hg budget for each control period in 2010 and thereafter. [4020, definitions of "public health set-aside budget" and "set-aside percentage"]
6. Existing units are those commencing operation prior to January 1, 2001. [4120 A 1 a]
7. New units are those commencing operation on or after January 1, 2001. [4120 A 1 b]
8. Initial allocations (2010 – 2014) for existing EGUs are issued on November 30, 2006 and based on the adjusted heat input normalized over the state budget. [4110 A; 4120 A 1 a and 2 a, and B]
9. Subsequent allocations (2015 and thereafter) for existing EGUs are issued annually beginning October 31, 2009, six years in advance; and based on the adjusted heat input. [4110 B; 4120 A 1 a and 2 a, and B]
10. Allocations for existing EGUs are calculated using the heat input, determined by averaging the three highest years of the years 2000 through 2004. [4120 A 1 a and 2 a]
11. Initial allocations (2010) for new EGUs are issued on October 31, 2010 and based on electrical output normalized over the new unit set-aside budget. [4110 C; 4120 A 1 b and 2 b, C and D]
12. Subsequent allocations (2011 and thereafter) for new EGUs are issued annually beginning October 31, 2011 and based on the first five years of electrical output. [4110 C; 4120 A 1 b and 2 b, C and D]
13. Allocations for new EGUs are calculated using the converted heat input (electrical output), determined by averaging the three highest years of the first five years of operation. [4120 A 1 b and 2 b]
14. Compliance is determined by comparing the amount of allowances issued to the owner with the total amount of emissions from all of the affected units located in the Commonwealth. [4060 A and C]
15. Use of allowances other than those allocated to the unit by the board may not be used to

comply; except that those units under common control may sum the emissions and allowances from the affected units to determine compliance. [4060 A 3 and 4070]

16. All units must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [4060 B]

Non-EGU Rule [Article 6 of Part II of 9 VAC 5 Chapter 60]

1. The rule applies to all stationary sources, with some exemptions as noted below. [400 A]

2. Exempt sources include: [400 C]

A. Sources that have a potential to emit equal to or less than 0.000825 lb/hr or 7.25 lb/yr;

B. Generators or boilers that burn only natural gas, propane, or kerosene; and

C. Coal-fired EGUs and quarry or stone crushing operations.

3. The rule prohibits any emissions of mercury in such quantities as to cause, or contribute to, any adverse environmental impact. [420]

4. State operating permits will be used as the legally enforceable administrative mechanism to implement the rule. [430]

5. The rule allows the board to request such information as may be necessary to implement the rule and this information is to be submitted within 180 days. [440 A]

6. The rule allows the board to request stack tests as may be necessary to implement the rule and the results are to be submitted within 60 days. [440 B]

7. The rule allows the board to request an environmental assessment in order to determine if the source may cause, or contribute to, any adverse environmental impact. [450 A]

8. If the board believes, and notifies an owner, that the source may discharge emissions of mercury in such quantities as to cause, or contribute to, any adverse environmental impact, the owner shall choose one or more of the following options: [460 A]

A. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to any adverse environmental impact.

B. Control the emissions from the source (i) to a level such that the emissions from the facility do not, and will not, cause, or contribute to any adverse environmental impact or (ii) to a level that reflects the degree of emission limitation and the percentage reduction achievable through application of the best system of continuous emission reduction.

C. Demonstrate that a technology for the control of the emissions is unavailable and that no emission reduction can be achieved.

9. An owner has 45 days to notify the board as to which option in 8 A-C it will select and twelve months to submit a plan complete with schedule for the option chosen. [460 B]

10. Sources that choose options 8 A or C will, prior to the decision of the board on the

acceptability of the demonstration, be subject to public participation procedures. [460 B]

Issue for Public Comment

In addition to requesting comments on the regulations promulgated by the Board, the notice of public comment will request comments on (i) the costs and benefits of the proposal, (ii) effects of the proposal on farm and forest land preservation, and (iii) impacts of the proposal on small businesses. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

In addition, the notice will request comments on alternative proposals, including the EPA model trading rule, and the cost and benefits of those alternatives. Finally, the notice will request comment on the extent that any alternative proposal should include innovative provisions such as those for public health set-aside, voluntary public health set-aside, efficient energy/renewable energy set-aside.