

[The following document is a model rule to implement regional SO₂ milestones and a backstop trading program in accordance with section 309 of the regional haze rule. The regional haze rule establishes the mandatory requirements that must be met by a state or tribal implementation plan. This model rule was developed through the broad stakeholder process of the WRAP as a template to facilitate consistent, multi-jurisdictional implementation of section 309. The template does not establish the only acceptable way to implement section 309, but it does have the benefit of extensive review and discussion by the many stakeholders involved in the WRAP process, including EPA review and comment. A state or tribe that develops alternate language will need to demonstrate to the other participating states and tribes and EPA that their plan and accompanying rules will respect the sovereignty of other participating states and tribes; satisfies the regional haze rule; be enforceable; be consistent with the emissions and allowance tracking provisions and trading provisions in implementation plans developed by other participating states and tribes; and be administratively practicable.]

Western Backstop SO₂ Trading Program Model Rule

March 24, 2003 Draft

[Note: This Model Rule covers only the post-trigger phase of the Western Backstop SO₂ Trading Program (“WEB Trading Program”). The Model SIP/TIP covers both the pre-trigger and post-trigger phases of the program, and is known as the SO₂ Milestones and Backstop Trading Program. The Model SIP/TIP and the Model Rule should be reviewed together in order to fully understand the complete WEB Trading Program.]

A. Purpose

1. This Rule implements the Western Backstop SO₂ Trading Program (“WEB Trading Program”) provisions required under the federal Regional Haze Rule, 40 CFR § 51.309, and [state or tribe]’s regional haze Implementation Plan.
2. Nothing in this Rule waives any requirement otherwise in effect or subsequently required under another program, including Rules governing new sources.

B. Definitions

The definitions in this part apply only to this Rule:

Account Certificate of Representation means for a WEB source, the completed and signed submission required to designate an Account Representative for a WEB source who is authorized to represent the owners and operators of the WEB source with regard to matters under the WEB Trading Program and for a general account, the individual who is authorized to represent the persons having an ownership interest with respect to allowances in the general account with regard to matters concerning the general account.

Account Representative means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program (including, for example, to transfer and otherwise manage allowances and certify all submissions to the Allowance Tracking System and the emissions tracking database for the purposes of this Rule) or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

Act means the federal Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Actual Emissions means, for the purpose of this Rule, total annual SO₂ emissions as reported to EPA under 40 CFR Part 75 or to the authorized permitting agency in accordance with the requirements of this Rule or Title V of the Clean Air Act, as applicable, and revised as necessary by the states, tribes, or EPA.

Allocate means to assign allowances to a WEB source through section C1 of the Implementation Plan.

Allowance means the limited authorization under the WEB Trading Program to emit one ton of SO₂ during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by this Rule.

Allowance limitation means the tonnage of SO₂ emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under Section L1 of this Rule on the allowance transfer deadline for that control period.

Allowance Tracking System means the system developed by [state or tribe] where allowances under the WEB Trading Program are recorded, held, transferred and deducted.

Allowance Tracking System account means an account in the Allowance Tracking System established for purposes of recording, holding, transferring, and deducting allowances.

Allowance transfer deadline means the deadline established in Section J.2 of the Model Rule when allowances must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

Compliance account means an account established in the Allowance Tracking System under Section H1 of this Rule for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

Compliance certification means a submission to [state or tribe] by the Account Representative as required under Section L2 of this Rule to report a WEB source's compliance or noncompliance with this Rule.

Control period means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

Emissions tracking database means the central database where SO₂ emissions for WEB sources as recorded and reported in accordance with this Rule are tracked to determine compliance with allowance limitations.

Existing source means, a stationary source that commenced operation before the Program Trigger Date.

Fugitive emissions are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

General account means an account established in the Allowance Tracking System under Section H of this Rule for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

Milestone means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in Section A of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

New WEB Source means a WEB source that commenced operation on or after the Program Trigger Date.

New Source Set-aside means a pool of allowances that are available for allocation to new sources in accordance with the provisions of Section C1.3 of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

Opt-in means to choose to participate in the WEB Trading Program by following the procedures in Section D4 of this Rule and to comply with the terms and conditions of this Rule.

Owner or operator means any person who is an owner or who operates, controls or supervises a WEB source, and includes but is not be limited to any holding company, utility system or plant manager.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the EPA Administrator.

Program trigger date means the date that [state or tribe] determines that the WEB Trading Program has been triggered in accordance with the provisions of Section A2 of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

Program trigger years means the years shown in Table 1, column 3, of the SO₂ Milestones and Backstop Trading Program Implementation Plan for the applicable milestone if the WEB

Trading Program is triggered as described in Section A of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

Renewable Energy Facility means a facility that generates electricity by non-nuclear and non-fossil technologies that results in low or no air emissions. The term includes electricity generated by wind energy technologies; solar photovoltaic and solar thermal technologies; geothermal technologies; technologies based on landfill gas and biomass sources, and new low-impact hydropower that meets the Low-Impact Hydropower Institute criteria. Biomass includes agricultural, food and wood wastes. The term does not include pumped storage or biomass from municipal solid waste, black liquor, or treated wood.

Retired source means a WEB source that has received a retired source exemption as provided in Section D4 of this Rule.

Serial number means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with Section G2.

Stationary source means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.

Submit means sent to the appropriate authority under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

Ton means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

Tracking System Administrator means the person designated by [state or tribe] as the administrator of the Allowance Tracking System and the emission tracking database.

WEB source means a stationary source that meets the applicability requirements of Section D of this Rule.

Western Backstop SO₂ Trading Program (“WEB Trading Program”) refers to this Rule, triggered as a backstop in accordance with the provisions in the SO₂ Milestones and Backstop Trading Program Implementation Plan, if necessary, to ensure that regional SO₂ emissions are reduced.

C. WEB Trading Program Trigger

1. This Rule shall become effective on the program trigger date in accordance with the procedures outlined in the SO₂ Milestones and Backstop Trading Program Implementation Plan.

2. Section M of this Rule shall become effective on January 1, 2018, or the Program Trigger Date, whichever is earlier, in accordance with the procedures in the SO₂ Milestones and Backstop Trading Program Implementation Plan. Section M of this Rule shall remain effective until the provisions of section M have been fully implemented.

D. WEB Trading Program Applicability

1. General Applicability

This Rule applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in paragraphs (a) through (d) of this subsection. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

The following are WEB sources:

- (a) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to SO₂ emissions.

- (b) All stationary sources not meeting the criteria of D1(a) of this Rule that have actual SO₂ emissions of 100 tons or more per year in the Program Trigger Years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to one of the following categories of stationary source:
 - (i) Coal cleaning plants (with thermal dryers);
 - (ii) Kraft pulp mills;
 - (iii) Portland cement plants;
 - (iv) Primary zinc smelters;
 - (v) Iron and steel mills;
 - (vi) Primary aluminum ore reduction plants;
 - (vii) Primary copper smelters;
 - (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (ix) Hydrofluoric, sulfuric, or nitric acid plants;
 - (x) Petroleum refineries;
 - (xi) Lime plants;
 - (xii) Phosphate rock processing plants;
 - (xiii) Coke oven batteries;
 - (xiv) Sulfur recovery plants;
 - (xv) Carbon black plants (furnace process);

- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Act.

(c) An opt-in source that meets the requirements of Section D3 of this Rule.

(d) A new source that begins operation after the Program Trigger Date and has the potential to emit 100 tons SO₂.

(e) [State or tribe] may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a source is not a WEB source if the source:

(1) in each of the previous five years had actual SO₂ emissions of less than 100 tons per year, and

(i) had actual SO₂ emissions of 100 tons or more in a single year due to a temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner and that the source took timely and reasonable action to minimize the temporary emission increase. A temporary emission increase due to poor maintenance or careless operation does not meet the criteria of this section; and

(ii) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the [state or tribe]'s determination under this section; or

(iii) had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides cost of such fuels or feedstocks.

2. Participation

Except as provided for in Section D4 of this Rule, once a source is subject to the WEB Trading Program, it will remain in the program every year thereafter.

3. Opt-In Provisions

(a) Any owner or operator of a stationary source that is not a WEB source under Section D1 of this Rule may submit an application to opt-in to the WEB Trading Program. The application shall include the following information:

- (1) Registration information in accordance with Section F1 of this Rule.
- (2) Monitoring plan in accordance with Section I1(b) of this Rule;
- (3) Complete Account Certificate of Representation in accordance with Section E1(c);
- (4) Documentation of the opt-in source's baseline control period SO₂ emissions. Baseline control period emissions are a representative average of the actual SO₂ emissions of two consecutive control periods within the five years preceding the opt-in application and must be based on monitoring that is equivalent to Section I of this Rule. If monitoring during the full baseline period is not equivalent to Section I of this Rule, the opt-in source must submit with the application one year of monitoring data based on Section I of this Rule, and the actual SO₂ emissions for that year will be the baseline control period emissions. In no event may the baseline be greater than allowable SO₂ emissions for that source.
- (5) Signed certification that the opt-in source is not already a WEB source under Section D1 of this Rule, and the opt-in source has not been granted a retired source exemption under Section D4 of this Rule.

(b) The source's opt-in status will be effective when the source receives the following information from [state or tribe]:

- (1) Notification of approval of the source as an opt-in source
- (2) Amount of allowances that have been allocated to the opt-in source in accordance with the provisions of Section C1.3 of the SO₂ Milestones and Backstop Trading Program Implementation Plan.
- (3) Notification of the first control period when the opt-in source must demonstrate compliance in accordance with Section L of this Rule.

(4) Notification that the opt-in source has become a WEB source and will be subject to all provisions of this Rule, and may not opt out in the future, unless the source is granted a retired source exemption under Section D4 of this Rule.

(c) Starting with the first control period after the control period in which an opt-in source is permanently retired, the opt-in source shall not be considered a WEB source, and shall not be allocated allowances as an opt-in source. The retired opt-in source must meet the requirements of Section D4 of this Rule.

4. Retired Source Exemption

(a) Application

Any WEB source including a WEB opt-in source that is permanently retired shall apply for a retired source exemption. The WEB source may only be considered permanently retired if all SO₂ emitting units at the source are permanently retired. The application shall contain the following information:

- (1) Identification of the WEB source, including plant name and AIRS code.
- (2) Name of Account Representative.
- (3) Description of the status of the WEB source, including the date that the WEB source was permanently retired.
- (4) Signed certification that the WEB source is permanently retired and will comply with the requirements of Section D4 of this Rule.
- (5) Verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice

The retired source exemption shall not be effective until [state or tribe] notifies the source that a retired source exemption has been granted. *[For example, state or tribe could include a provision requiring the permitting authority to notify the source.]*

(c) Responsibilities of Retired Sources:

- (1) A retired source shall be exempt from Sections I and L of this Rule, except as provided below.
- (2) A retired source shall not emit any SO₂ starting on the date the retired source exemption is issued.

(3) A retired source shall submit SO₂ emissions reports, as required by Section I5 of this Rule for any time period the source was operating during the control period prior to the date the source was permanently retired. The retired source shall be subject to the compliance provisions of Section L of this Rule, including the requirement to hold allowances in the source's compliance account to cover all SO₂ emissions during the control period when the source was permanently retired.

(4) The owners and operators and, to the extent applicable, the Account Representative of a retired source shall comply with the requirements of the WEB Trading Program in accordance with Section B of the SO₂ Milestones and Backstop Trading Program Implementation Plan for all periods in which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A retired source is not eligible to be a WEB opt-in source, and shall not be eligible to receive allowances from the new source set-aside described in Section C1.3 of the SO₂ Milestones and Backstop Trading Program Implementation Plan, even if the source resumes operation at a later date.

(6) WEB sources still in existence but retired for the purposes of this Rule shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired.

(d) Resumption of Operations

For a retired source other than an opt-in source under section D3 of this rule:

(1) Should a retired source desire to resume operation, the retired source must submit registration materials as follows:

(i) If the source is required to obtain a new source review permit or operating permit under [refer to applicable permitting Rules] prior to resuming operation, then registration information as described in Section F1 of this Rule and a copy of the retired source exemption must be submitted with the application required under [refer to applicable permitting Rules];

(ii) If the source is not required to obtain a new source review permit or operating permit under [refer to applicable permitting Rules] prior to resuming operation, then registration information as described in Section F1 of this Rule and a copy of the retired source exemption must be submitted to [state or tribe] at least ninety days prior to resumption of operation.

(2) The retired source exemption shall automatically expire on the day the source resumes operation.

(e) Loss of Future Allowances

A WEB source that is permanently retired and that does not apply to [state or tribe] for a retired source exemption within ninety days of the date that the source is permanently retired shall forfeit any unused and future allowances.

Note: This is not intended to be a punitive action, but a method to correct the number of allowances being tracked by the state. [State or tribe] will need to establish due process procedures for forfeiting these “abandoned” allowances in a manner that is consistent with the administrative procedures process. This provision is intended to address sources that go out of business, leave no forwarding address, and truly abandon their allowances. It is assumed that [state or tribe] will have a process to notify sources that their allowances may be forfeited so this provision does not lead to forfeiture just because the deadline was missed.

E. Account Representative for WEB Sources

Each WEB source must identify one Account Representative and may also identify an alternate Account Representative who may act on behalf of the Account Representative. Any representation, action, inaction or submission by the alternate Account Representative will be deemed to be a representation, action, inaction or submission by the Account Representative.

1. Identification and Certification of an Account Representative.

- (a) The Account Representative and any Alternate Account Representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the Account Representative and any alternate binding on the owners and operators of the WEB source.
- (b) The Account Representative shall submit to [state or tribe] and the Tracking System Administrator a signed and dated Account Certificate of Representation (Certificate) that contains the following elements:
 - (1) Identification of the WEB source by plant name, state and AIRS code;
 - (2) The name, address, e-mail (if available), telephone and facsimile number of the Account Representative and any alternate;
 - (3) A list of owners and operators of the WEB source;
 - (4) The following certification statement:

“I certify that I was selected as the Account Representative or alternate Account Representative, as applicable, by an agreement binding on the

owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the [state or tribe] regarding the WEB Trading Program.”

- (c) Upon receipt by the [state or tribe] of the complete Certificate, the Account Representative and any alternate Account Representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. The owners and operators shall be bound by any decision or order issued by [state or tribe] regarding the WEB Trading Program.
- (d) No WEB Allowance Tracking System account shall be established for the WEB source until the Tracking System Administrator has received a complete Certificate. Once the account is established, the Account Representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

2. Requirements and Responsibilities

- (a) The responsibilities of the Account Representative include, but are not limited to, the transferring of allowances, and the submission of monitoring plans, registrations, certification applications, SO₂ emissions data and compliance reports as required by this Rule, and representing the source in all matters pertaining to the WEB Trading Program.
- (b) Each submission under this program shall be signed and certified by the Account Representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the Account Representative:

“I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

3. Changing the Account Representative or Owners and Operators

- (a) Changes to the Account Representative or the alternate Account Representative

The Account Representative or alternate Account Representative may be changed at any time by sending a complete superseding Certificate to the [state or tribe] and the Tracking System Administrator under Section E1(c) of this Rule, with the change taking effect upon receipt of such Certificate by the [state or tribe]. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Account Representative or alternate prior to the time and date when the Tracking System Administrator receives the superseding Certificate shall be binding on the new Account Representative and the owners and operators of the WEB source.

(b) Changes in Owners and Operators

(1) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the Account Representative shall submit a revised Certificate amending the list of owners and operators to include such change.

(2) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the Certificate, such new owner or operator shall be deemed to be subject to and bound by the Certificate, the representations, actions, inactions, and submissions of the Account Representative of the WEB source, and the decisions, orders, actions, and inactions of [state or tribe] as if the new owner or operator were included in such list.

F. Registration

1. Duty to Register

All WEB sources shall submit the following information to [state or tribe], with a copy to the Tracking System Administrator by the deadlines in Section F2 of the Rule.

- (a) Identification of the WEB source, including plant name and AIRS code;
- (b) For each WEB opt-in source, certification by the Account Representative that the source is not a WEB source under Section D1 of this Rule and is not covered by a retired source exemption.
- (c) Information required to establish a compliance account in accordance with Section H1 of this Rule.
- (d) Information required to be part of emission tracking system database in accordance with the SO₂ Milestones and Backstop Trading Program Implementation Plan.

[Note: Further definition of the emission tracking database will be developed along with tracking system specifications.]

2. Deadlines

(a) Each source that is a WEB source on or before the Program Trigger Date shall submit the registration information required in Section F1 of this Rule to the [state or tribe] one year after the Program Trigger Date.

(b) Any existing source that becomes a WEB source after the Program Trigger Date shall submit the registration information required in Section F1 of this Rule to the [state or tribe] by September 30 of the year following the inventory year in which the source exceeded the emission threshold.

(c) Any new WEB source shall submit the registration information required in Section F1 of this Rule to the [state or tribe] prior to the commencement of operation.

3. Interface with Title V

Any allocation, transfer or deduction of allowance to or from the compliance account of a WEB source shall not require revision of the WEB source's operating permit.

G. Allowance Allocations

1. The Tracking System Administrator will record the allowances for each WEB source in the compliance account identified by the source in accordance with Section F1(c) of this Rule, once the allowances are allocated by the [state or tribe] under Section C1 of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

2. The Tracking System Administrator will assign a serial number to each allowance in accordance with Section C2 of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

3. All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

4. An allowance is not a property right, and is a limited authorization to emit one ton of SO₂ valid only for the purpose of meeting the requirements of this Rule. No provision of this WEB Trading Program or other law should be construed to limit the authority of the United States or [state or tribe] to terminate or limit such authorization.

5. Early Reduction Bonus Allocation.

Any WEB source that reduces permitted annual SO₂ emissions to a level that is below the floor level allocation established for that source in Section C1 of the SO₂ Milestones and Backstop Trading Program Implementation Plan in any year between 2003 and the program trigger year

may apply to [state or tribe] for an early reduction bonus allocation. The application must be submitted ninety days after the Program Trigger Date.

The application for an early reduction bonus allocation must contain the following information:

- (a) Demonstration through limits in a permit or other enforceable documents that the reductions were in place during the time the source was generating the bonus reduction allowances, along with any subsequent permits. Such documentation must contain the annual SO₂ limit and must require monitoring for SO₂ emissions that meets the requirements in Section I of this Rule, and such records should be retained for five years.
- (b) Demonstration that the floor level established for the source in accordance with Section C1 of the SO₂ Milestones and Backstop Trading Program Implementation Plan was calculated using data that are consistent with the new monitoring methodology. If new monitoring techniques will change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques should be included in the application.

6. Request for allowances for new WEB sources or modified WEB Sources.

(a) A new WEB source or an existing WEB source that has increased production capacity through a permitted change in operations [refer to state or tribal NSR Rules] may apply to [state or tribe] for an allocation from the new source set-aside, as outlined in Section C1.3 of the Implementation Plan.

(1) A new WEB source is eligible to apply for an annual allocation equal to the permitted annual SO₂ emission limit for that source after the source has commenced operation.

(2) An existing WEB source is eligible to apply for an annual allocation equal to the permitted annual SO₂ emission limit for that source that is attributable to any amount of production capacity that is greater than the permitted production capacity for that source as of January 1, 2003.

(3) A source that has received a retired source exemption under Section D4 of this Rule is not eligible to apply for an allocation from the new source set-aside.

(b) The application for an allocation from the new source set-aside must contain the following information:

- (1) Demonstration that shows the permitted production capacity of the source before and after the new permit;
- (2) For new WEB sources, documentation of the actual date of the commencement of operation and a copy of the permit.

H. Establishment of Accounts

1. Allowance Tracking System Accounts

All WEB sources are required to open a compliance account. Any person may open a general account for holding and transferring allowances. To open either type of account, an application that contains the following information shall be submitted:

- (a) The name, mailing address, e-mail address, telephone number, facsimile number of the Account Representative. For a compliance account, include a copy of the Account Certificate of Representation of the Account Representative and any alternate as required in Section E1(b) of this Rule. For a general account, include the Account Certificate of Representation of the Account Representative and any alternate as required in Section H3(b) of the Rule.
- (b) The WEB source or organization name;
- (c) The type of account to be opened; and
- (d) A signed certification of truth and accuracy by the Account Representative according to Section E2(b) of this Rule for compliance accounts and for general accounts, certification of truth and accuracy by the Account Representative according to Section H4 of this Rule.

2. Account Representative for General Accounts

For a general account, one Account Representative must be identified and an alternate Account Representative may be identified and may act on behalf of the Account Representative. Any representation, action, inaction or submission by the alternate Account Representative will be deemed to be a representation, action, inaction or submission by the Account Representative.

3. Identification and Certification of an Account Representative for General Accounts

- (a) The Account Representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the Account Representative binding on all persons who have an ownership interest with respect to allowances held in the general account.
- (b) The Account Representative shall submit to [state or tribe] and the Tracking System Administrator a signed and dated Account Certificate of Representation (Certificate) that contains the following elements:
 - (1) The name, address, e-mail (if available), telephone and facsimile number of the Account Representative and any alternate;

(2) The organization name;

(3) The following certification statement:

“I certify that I was selected as the Account Representative or alternate Account Representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the [state or tribe] regarding the general account.”

(c) Upon receipt by the [state or tribe] of the complete Certificate, the Account Representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard in all matters concerning the general account. Such persons shall be bound by any decision or order issued by [state or tribe]

(d) No WEB Allowance Tracking System general account shall be established until the Tracking System Administrator has received a complete Certificate. Once the account is established, the Account Representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

4. Requirements and Responsibilities

Each submission for the general account shall be signed and certified by the Account Representative for the general account. Each submission shall include the following truth and accuracy certification statement by the Account Representative:

“I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

5. Changing the Account Representative

The Account Representative or alternate Account Representative may be changed at any time by sending a complete superseding Certificate to the [state or tribe] and the Tracking System Administrator under section H3(b) of this rule, with the change taking effect upon receipt of such Certificate by the [state or tribe]. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Account Representative or alternate prior to the time and date when the [state or tribe] receives the superseding Certificate shall be binding on the new Account Representative and all person having ownership interest with respect to allowances held in the general account.

6. Changes to the Account

Any change to the information required in the application for an existing account under H1 of this Rule shall require a revision of the application.

I. Monitoring, Recordkeeping and Reporting

Note: Recommendations regarding monitoring and recordkeeping and reporting are under development by the WRAP.

1. General Requirements

(a) SO₂ emissions from each WEB source, and each unit at the source, if applicable, shall be monitored as specified by this Section and 40 CFR Part 75 or Appendix _____. WEB Sources already subject to 40 CFR Part 75, shall continue to comply with those requirements. For all other sources, see Appendix _____.

(b) Each WEB source shall submit a monitoring plan to the [state or tribe] containing the following requirements:

(1) [*MTF monitoring workgroup will insert list here*]

(c) The monitoring plan shall be submitted by the following dates:

(1) For each source that is a WEB source on or before the Program Trigger Date, the monitoring plan shall be submitted 180 days after such Program Trigger Date.

(2) For any existing source that becomes a WEB source after the Program Trigger Date: the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the SO₂ emissions threshold.

(3) For any new WEB source: the monitoring plan shall be included with the permit application for New Source Review. [State or tribe shall modify the language as necessary to conform to their new source review rules.]

(d) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements [to be inserted here by the MTF monitoring workgroup] or referenced in Appendix ____ by the following dates:

(1) For each source that is a WEB source on or before the Program Trigger Date: two years prior to the start of the first control period as described in section L.

(2) For any existing source that becomes a WEB source after the Program Trigger Date: one year after the due date for the monitoring plan under I.1(c)(2) of this Rule.

(3) For any new WEB source: by the date the new source commences operation.

(e) All monitoring systems are subject to initial performance testing, periodic calibration, accuracy testing and quality assurance/quality control testing as specified in Appendix ____, or Part 75, as applicable.

(f) For any period in which valid data is not being recorded by monitoring systems specified in this Rule, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or Appendix ____, as applicable.

2. WEB sources subject to 40 CFR Part 75 shall demonstrate compliance with the WEB Trading Program with a certified Part 75 monitoring system.

3. WEB sources not subject to 40 CFR Part 75 shall demonstrate compliance with the WEB Trading Program through the current methodologies delineated in the Title V permit as adjusted to achieve a level of accuracy comparable to Part 75 or Appendix ____.

4. Recordkeeping

(a) The WEB source shall keep copies of all reports, registration materials, compliance certifications, SO₂ emissions data, and other submissions not specified below in I4(b) on site for five years.

(b) The WEB source shall keep all Account Certificates of Representation on site at the source through the year 2018.

5. Reporting

The WEB source shall submit annual sulfur dioxide emissions and operations information to [state or tribe] within ninety days after the end of each control period in accordance with standards specified in 40 CFR Part 75, subpart G, or Appendix ____, as applicable.

J. Allowance Transfers

1. Procedure

To transfer allowances, the Account Representative shall submit the following information to the Tracking System Administrator:

- (a) The transfer account number(s) identifying the transferor account;
- (b) The transfer account number(s) identifying the transferee account;
- (c) The serial number of each allowance to be transferred; and
- (d) The transferor's Account Representative's name and signature and date of submission.

2. Deadline

The allowance transfer deadline is midnight Pacific Standard Time March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the Tracking System Administrator in order to demonstrate compliance under Section L1 of the rule for that control period.

K. Use of Allowances from a Previous Year

1. Any allowance that is held in a compliance account or general account will remain in such an account unless and until the allowance is deducted in conjunction with the compliance process, or transferred to another account.
2. In order to demonstrate compliance under section L1 of this rule for a control period, WEB sources shall only use allowances allocated for that current control period or any previous year.
3. If flow control procedures for the current control period have been triggered as outlined in Section C4.2 of the SO₂ Milestones and Backstop Trading Program Implementation Plan, then the use of allowances that were allocated for any previous year will be limited as follows:
 - (a) the number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined.

(b) the number determined in (a) will be multiplied by the flow control ratio established in accordance with Section C7.1 of the SO₂ Milestones and Backstop Trading Program Implementation Plan to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) allowances that were allocated for a previous year in excess of the number determined in (b) may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under Section L of this Rule.

4. Special provisions for the year 2018. WEB sources shall only use allowances allocated for 2018 to show compliance for the 2018 control period. Unused allowances from earlier years shall not be available for use in 2018.

L. Compliance

1. Compliance with Allowance Limitations

(a) The WEB source must hold allowances, in accordance with Section L1(b) and Section K of this Rule, as of the allowance transfer deadline in the WEB source's compliance account in an amount not less than the total SO₂ emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of Section I of this Rule.

(1) For each source that is a WEB source on or before the Program Trigger Date, the first control period is the calendar year that is six years following the calendar year for which SO₂ emissions exceeded the milestone in accordance with procedures in Section A of the SO₂ Milestones and Backstop Trading Program Implementation Plan.

(2) For any existing source that becomes a WEB source after the Program Trigger Date, the first control period is the calendar year that is four years following the inventory year in which the source exceeded the SO₂ emissions threshold.

(3) For any new WEB source after the Program Trigger Date the first control period is the first full calendar year that the source is in operation.

(4) If the WEB Trading Program is triggered in accordance with the 2013 review procedures in section A4 of the SO₂ Milestones and Backstop Trading Program implementation plan, the first control period for each source that is a WEB source on or before the Program Trigger Date is the year 2018.

(b) Allowance transfer deadline

An allowance may only be deducted from the WEB source's compliance account if:

(1) the allowance was allocated for the current control period or meets the requirements in Section K of this Rule for use of allowances from a previous control period, and

(2) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations shall be determined by comparing the following two numbers:

(1) the monitored SO₂ emissions data reported by the source to [state or tribe], in accordance with Section I of this Rule, and recorded in the emissions tracking database and

(2) the allowance allocations and transfers recorded in the Allowance Tracking System, adjusted in accordance with Section K of this Rule.

(d) To the extent consistent with Section K of this Rule, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's Account Representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account.

2. Certification of Compliance

(a) For each control period in which a WEB source is subject to the allowance limitation, the Account Representative of the source shall submit to [state or tribe] a Compliance Certification report for the source.

(b) The Compliance Certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(1) Identification of each WEB source;

(2) At the Account Representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the allowance limitation; and

(3) The Compliance Certification report according to subpart (c) of this section.

- (c) In the Compliance Certification report, the Account Representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated during the control period covered by the report in compliance with the requirements of the WEB Trading Program applicable to the source including:
- (1) Whether the WEB source operated in compliance with the SO₂ allowance limitation;
 - (2) Whether SO₂ emissions data has been submitted to [states or tribe] in accordance with Section II of this Rule and other applicable guidance, for review, revision as necessary, and finalization for forwarding to the SO₂ Allowance Tracking System for recording;
 - (3) Whether the monitoring plan that governs the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute SO₂ emissions to the source, in accordance with Section II of this Rule;
 - (4) Whether all the SO₂ emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures; and
 - (5) Whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine SO₂ emissions.

3. Penalties for any WEB source exceeding its allowance limitations

Note: Until such time that [state or tribe] has authority to exercise administrative penalties, states or tribes will rely on their existing penalty structure for enforcement of the program. The following language is suggested. The concept of consistent and stringent penalties across the region was a critical element of the Annex. States will need to address this issue perhaps through additional legislative authority.

(a) Allowance deduction penalties

- (1) An allowance deduction penalty will be assessed equal to two times the number of the WEB source's tons of SO₂ emissions in excess of its allowance limitation for a control period, determined in accordance with Section L1 of this Rule. Allowances allocated for that control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the

compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(2) Any allowance deduction required under this Section shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of SO₂ emissions in excess of its allowance limitation if [state or tribe] so chooses.

(b) Financial penalties

A financial penalty of \$5,000 (adjusted each year for inflation, based on the consumer price index) per ton of SO₂ emissions in excess of the WEB source's allowance limitation shall be levied.

4. Liability

(a) WEB Source liability for non-compliance

Separate and regardless of any automatic penalties assessed for allowance deduction penalty and financial penalty, a WEB source that violates any requirement of this Rule is subject to civil and criminal penalties under [state or tribe] law and the Clean Air Act. Each day of the control period is a separate violation, and each ton of SO₂ emissions in excess of a source's allowance limitation is a separate violation.

(b) General liability

[State or tribe] may or may not be able to adopt the liability provisions. If a state has existing liability Rules, those can be referenced in this location.]

(1) Any provision of the WEB Trading Program that applies to a source or an Account Representative shall apply also to the owners and operators of such source.

(2) Any person who violates any requirement or prohibition of the WEB Trading Program will be subject to enforcement pursuant to applicable state, tribal or federal law.

(3) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program shall be subject to criminal enforcement pursuant to the applicable state, tribal or federal law.

M. Special Penalty Provisions for Year 2018

1. If the WEB Trading Program is triggered as outlined in Section A of the SO₂ Milestones and Backstop Trading Program Implementation Plan, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

- (a) All WEB sources shall register, and open a compliance account within nine months after the Program Trigger Date, in accordance with Sections F1 and H of this Rule.
- (b) The Tracking System Administrator will record the allowances for the 2018 control period for each WEB source in the source's compliance account once [state or tribe] allocates the 2018 allowances under Section C1 of the SO₂ Milestones and Backstop Trading Program Implementation Plan.
- (c) The allowance transfer deadline is midnight Pacific Standard Time on May 30, 2021. WEB sources may transfer allowances as provided in Section J1 of this Rule until the allowance transfer deadline.
- (d) A WEB source must hold allowances allocated for 2018 including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline. Emissions are determined using the pre-trigger monitoring provisions in Section B of the SO₂ Milestones and Backstop Trading Program Implementation Plan, and [refer to state or tribe emission inventory rule].
- (e) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Sections K4, L1(d) and L3 of this Rule, except that SO₂ emissions shall be determined under Section M1(d) of this Rule.