

*K. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to November 30, 1999. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: November 29, 1999.

**Carol M. Browner,**  
*Administrator.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

2. Section 52.34 is amended by revising paragraph (l) to read as follows:

**§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.**

\* \* \* \* \*

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until January 10, 2000.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[084-1084; FRL-6483-4]

**Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve State Implementation Plan (SIP) revisions submitted by the state of Iowa. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to hazardous air pollutants. The effect of this action is to ensure Federal enforceability of the state's air program rule revisions.

**EFFECTIVE DATE:** This rule will be effective January 3, 2000.

**ADDRESSES:** Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**

Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101 at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:**

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

**What Is the Background Information?**

On May 13, 1999, we published proposed and direct final **Federal Register** notices (64 FR 25855 and 64 FR 25825) which took action to approve as a revision to the Iowa SIP a set of rule revisions submitted by the state of Iowa on December 11, 1998, and January 29, 1999. Because adverse comments were received during the public comment period, we published a withdrawal notice in the **Federal Register** on July 2, 1999 (64 FR 35941). Today's document takes final action on the state's submissions and addresses the public comments.

**What Comments Were Received?**

We received four comment letters. All commenters objected to our approving the revision in the SIP to Iowa rule Chapter 28, "Ambient Air Quality Standards," Rule 28.1. In this rule, the state had adopted by reference the national ambient air quality standards (NAAQS) promulgated by us on July 18, 1997, which revised the particulate matter and ozone NAAQS.

The commenters stated that Rule 28.1 should not be approved by us in light of the recent decision of the United States Court of Appeals for the District of Columbia Circuit in the case of

*American Trucking Associations, Inc. v. United States Environmental Protection Agency*. The commenters stated that since the Court vacated the revised PM10 standard and remanded other standards to EPA, it would be inappropriate for EPA to approve Iowa's adoption of these standards. Some commenters also questioned Iowa's authority to adopt the NAAQS rules in light of the Court's decision.

**What Action Did the State Take in Response to the Comments?**

The Iowa Department of Natural Resources subsequently submitted a letter, dated July 15, 1999, which requested that Rule 28.1 be removed from its earlier request for approval as a SIP revision. Therefore, Rule 28.1 is no longer part of the submission by Iowa. We did not receive adverse comments on any of the other revisions discussed in the May 13 actions.

**What Final Action Are We Taking Now?**

We are taking final action today to approve the rules discussed in our May 13, 1999, **Federal Register** document, except for Rule 28.1. EPA is eliminating Rule 28.1 from its approval in light of the state's withdrawal of that rule, which, in effect, means that Rule 28.1 is no longer before EPA to act upon. This action has no impact on the state's ability (and obligation) to meet the relevant requirements specified in section 110 of the Clean Air Act (CAA) with respect to attainment and maintenance of NAAQS. EPA's rationale for approval of the remainder of the rules is discussed in detail in the May 13 proposal.

**Conclusion**

Final action: EPA is taking final action to approve a revision to the Iowa SIP.

**Administrative Requirements***A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

*B. E.O. On Federalism*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior

consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 12612, because it merely codifies Federal approval of preexisting requirements. The rule affects only one state, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

#### C. E.O. 13045

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it codifies provisions which implement a previously promulgated health or safety-based standard.

#### D. E.O. 13084

Under E.O. 13084, *Consultation and Coordination with Indian Tribal Governments*, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. In addition, this final rule merely codifies Federal approvals of state requirements which have already occurred. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the

CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action codifies Federal approvals of preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 8, 1999

**Diane K. Callier,**

*Acting Regional Administrator, Region VII.*

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### EPA-APPROVED IOWA REGULATIONS

#### PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart Q—Iowa

2. In § 52.820 the following entries for paragraph (c), EPA-approved regulations, are revised to read as follows:

#### § 52.820 Identification of plan.

\* \* \* \* \*

(c) EPA-approved regulations.

Iowa citation	Title	State effective date	EPA approval date	Explanation
<b>Iowa Department of Natural Resources Environmental Protection Commission [567]</b>				
<b>Chapter 20 Scope of Title-Definitions-Forms-Rule of Practice</b>				
* * * * *				
567–20.2	Definitions	10/14/98	12/3/99 64 FR 67786	
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<b>Chapter 22 Controlling Pollution</b>				
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567–22.1	Permits Required for New or Existing Stationary Sources	12/23/98	12/3/99 64 FR 67786	Subrule 22.1(3)“b”(9) has not been approved.
* * * * *				
567–22.203	Voluntary Operating Permit Applications	10/14/98	12/3/99 64 FR 67786	
* * * * *				
567–22.300	Operating Permit by Rule for Small Sources	10/14/98	12/3/99 64 FR 67786	
* * * * *				
<b>Chapter 23 Emission Standards for Contaminants</b>				
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567–23.1	Emission Standards	10/14/98	12/3/99 64 FR 67786	Sections 23.1(2)–(5) are not approved in the SIP.
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<b>Chapter 25 Measurement of Emissions</b>				
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567–25.1	Testing and Sampling of New and Existing Equipment	12/23/98	12/3/99 64 FR 67786	Subrule 25.1(12) has not been approved.
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