

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
March 16, 1999	November 22, 1999	OAC 1501:13-1-04

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ37-2-203; FRL-6477-3]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of Carbon Monoxide State Implementation Plan Revision; Determination of Carbon Monoxide Attainment; Removal of Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, the EPA is finalizing its determination that the

New York—Northern New Jersey—Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, EPA is approving a State Implementation Plan revision submitted by the State of New Jersey on August 7, 1998. The intended effect of the revision is to remove New Jersey's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP.

EFFECTIVE DATE: This rule will be effective November 22, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.  
New Jersey Department of Environmental Protection, Bureau of

Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-3710.

SUPPLEMENTARY INFORMATION: EPA is determining that the New York—Northern New Jersey—Long Island carbon monoxide (CO) nonattainment area<sup>1</sup> has attained the health-related CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New Jersey's winter-time oxygenated gasoline (oxyfuel) program is no longer needed to ensure that air quality levels remain healthful. As a consequence of

<sup>1</sup> This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

these determinations, EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxyfuel program as a CO control measure from the State's CO SIP. It has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS. For detail regarding this determination, the reader is referred to the proposal for today's action, published in the September 9, 1999 **Federal Register** (64 FR 48970). It should be noted that there were no adverse comments associated with the proposed removal of the winter-time oxyfuel program.

Additional details regarding the applicability of the oxyfuel program in New Jersey, EPA's authority to approve oxyfuel removal from a state's SIP, and the further demonstration that oxyfuel removal from the New York and Connecticut parts of the area, as well as New Jersey, is now technically justifiable and appropriate and will maintain healthy CO air quality concentrations, can be found in the proposal for this action and a similar proposal on New York's oxyfuel program, published in the October 8, 1999 **Federal Register** (64 FR 54851).

### Conclusion

EPA is taking final action to approve New Jersey's August 7, 1998 SIP revision to remove the State's oxygenated gasoline program from the federally approved SIP. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

EPA is making its approval of today's action effective upon the date of publication in the **Federal Register**, based upon a finding of good cause. Approval of this action would give final assurance of fuel specification requirements to the industry supplying gasoline to New Jersey. Due to the impending oxyfuel program start date of November 1, on September 17, 1999, EPA issued "no enforcement action assurance" for New Jersey until this SIP change was effective, or until the scheduled end of the program on February 29, whichever came first. Good cause for making this rule effective upon publication is to remove, as soon as possible, the need for EPA's commitment not to enforce the oxyfuel program in New Jersey. Good cause is also to provide, as soon as possible, normal regulatory assurance regarding

fuel specifications which is desired by industry.

### Administrative Requirements

#### A. Executive Order 12866

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

#### B. Executive Orders on Federalism

Under Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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 Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 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 Executive Order 12612. The rule affects only two states, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

#### C. Executive Order 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This SIP revision is not subject to E.O. 13045 because it finalizes approval of a state program revision, and it is not economically significant under E.O. 12866.

#### D. Executive Order 13084

Under Executive Order 13084, 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. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, 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, Executive Order 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**E. Regulatory Flexibility Act**

The Regulatory Flexibility Act (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 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 Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, 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 Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act 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 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 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 proposes to approve amendments to 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 U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 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 in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: November 8, 1999.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart FF—New Jersey**

2. Section 52.1570 is amended by adding new paragraph (c)(68) to read as follows:

**§ 52.1570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(68) Revisions to the New Jersey State Implementation Plan (SIP) for carbon monoxide concerning the oxyfuel program, dated August 7, 1998, submitted by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

Amendments to Title 7, Chapter 27 of the New Jersey Administrative Code Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuels," effective August 17, 1998 (as limited in section 52.1605).

3. Section 52.1605 is amended by revising the entry for Subchapter 25 under the heading Title 7, Chapter 27, to read as follows:

**§ 52.1605 EPA—approved New Jersey regulations.**

State regulation	State effective date	EPA approved date	Comments
* * *	* * *	* * *	*
Title 7, Chapter 27			
* * *	* * *	* * *	*
Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuels;"	August 17, 1998	November 22, 1999 and Federal Register.	
* * *	* * *	* * *	*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IA 075-1075; FRL-6462-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Iowa Update to Materials Incorporated by Reference

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

**ACTION:** Final rule; annual update to IBR process.

**SUMMARY:** EPA is updating the materials submitted by Iowa that are incorporated by reference into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA.

**EFFECTIVE DATE:** This action is effective November 22, 1999.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101; the EPA Office of Air and Radiation, Docket and Information Center (Air Docket), 401 M Street S.W., Room M1500, Washington, D.C. 20460; and Office of the Federal Register, 800 North Capitol Street N.W., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward West at the above Region VII address or at (913) 551-7330.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is a SIP?

What action is EPA taking in this document?

How does this rule comply with EPA Administrative Procedures?

#### What is a SIP?

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP

document, incorporation by reference (IBR) procedures, and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

#### What Action Is EPA Taking in This Document?

On February, 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Iowa, Kansas, and Nebraska.

In this document EPA is doing the first annual update to the material being incorporated by reference by Iowa.

#### How Does This Rule Comply With EPA Administrative Procedures?

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's action simply codifies provisions which are already in effect as a matter of law in approved Federal and state programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

#### I. 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. 12875

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 OMB 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 Clean Air Act (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. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

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.